Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

VICTORIA GIAMPA,
Petitioner,

vs.

BRYCE C. DUCKWORTH, ESQ., SMITH, LARSEN & WIXOM; CHARLES F. GIAMPA; DISTRICT COURT JUDGE GLORIA SANCHEZ; DISTRICT COURT JUDGE SANDRA L. POMRENZE; DR. LOUIS MORTILLARO; THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; NEVADA SUPREME COURT; NEVADA STATE LEGISLATURE,

Respondents.

Petition for Writ of Certiorari to the Nevada Supreme Court

PETITION FOR WRIT OF CERTIORARI

Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Proper Person

QUESTIONS PRESENTED

What process is constitutionally due a minor child whose parent seeks a change of primary custody to joint custody when the Nevada Legislature fails to correctly define its terms and specifically whether prior mandatory mediation is required regarding constitutional issues of education and welfare before an adversary hearing is conducted to avoid harm to the children?

Whether the Nevada Supreme Court and Family Court Judges violates Victoria's liberty interests when they repeatedly deny her relief as an *aggrieved person* after she satisfies her heavy burden of proving a "clear and indisputable" right to mandamus relief recognized in *Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir.1977)?

Whether the Nevada Supreme Court's mooting of Victoria's Writ prevents her from seeking a determination that the Court's temporary order was incorrect on the merits when constitutional issues of the minor children's welfare and education were ignored and not addressed through investigation and/or mediation, and whether it would be inequitable to award fees to Attorney Duckworth effectively mooting out claims for child custody and other underlying issues which are still pending?

PARTIES TO THE PROCEEDING

Bryce C. Duckworth, Esq.
601 North Pecos Road
Las Vegas, Nevada 89101-2408

Charles F. Giampa
2785 E. Desert Inn
Las Vegas, NV 89121

Smith, Larsen & Wixom
1935 Village Center Circle
Las Vegas, Nevada 89134

Gloria S. Sanchez
Eighth Judicial District Court Judge
601 North Pecos Road
Las Vegas, Nevada 89101-2408

Sandra L. Pomrenze
Eighth Judicial District Court Judge
601 North Pecos Road
Las Vegas, Nevada 89101-2408

Dr. Louis F. Mortillaro, Ph.D.
501 S. Rancho Drive
Las Vegas, Nevada 89106

Eighth Judicial District Circuit
200 Lewis Avenue
Las Vegas, Nevada 89155

Nevada Supreme Court
200 Lewis Avenue
Las Vegas, NV 89155

State of Nevada Legislature
Sawyer Office Building
555 E. Washington Avenue
Las Vegas, Nevada 89101-1072

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Petitioner Victoria Giampa seeks this Court's immediate review of the unconstitutional procedures that are currently being used in the State of Nevada in an apparent effort to issue temporary orders denying minor children constitutional protected interest of parents to direct their upbringing and to guide their education and to issue orders emancipating minor children before the age of majority solely to eliminate child support, and to issue a change of joint custody when the Nevada Legislature fails to clearly define its terms. That keeping the children's constitutional issues of their education and welfare from being evaluated until a psychologist identifies their problems and until an adversary hearing is conducted is unconstitutional and places the children's welfare and lack of an appropriate education at risk of harm. This case illustrates the Court's shocking lack of concern and violations of their constitutional obligations to protect the minor children under the Best Interest of the Children Standard. Time is of the essence in this case, which raises important questions of historical significance.

UNREPORTED COURT OPINIONS BELOW

6/3/09 Order Denying Rehearing: **[App. A]**; 5/5/09 Notice in Lieu of Remittitur: **[App B]**; 4/9/09/ Order Denying Rehearing in Docket No. 52424 and Transferring Petition and Motion to Motion to Docket No. 51422: **[App. D]**; 4/9/09 Order Recalling Remittitur: **[App. E]**; 2/20/09 Order Affirming Appeal In Part and Dismissing Appeal in Part: **[App. I]**; 10/2/08 Order Denying Petition for Writ of Mandamus or Prohibition: **[App. L]**; 6/12/08 Order Denying Motion for Stay: **[App. Q]**; 1/25/08 Order Dismissing Appeal: **[App. S]**; 1/15/08, Order Denying Rehearing: **[App.**

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STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The judgment of the Nevada Supreme Court was entered on 3/10/09. On 5/12/09, the U.S. Supreme Court extended the time within which to file a petition for a writ of certiorari to and including 7/12/09. This jurisdiction is invoked under 28 U.S.C. § 1257(a).

Petitioner recognizes that this Court only rarely grants certiorari. This case, however, is extraordinary. The Family Law Section of the State Bar of Nevada requested the Nevada Supreme Court's assistance in defining "joint custody, *Potter v. Potter*, 121 Nev. 613, 119 P.3d 1246, (2005). Since that time, the Nevada Legislature fails to correctly define joint custody, and Eighth Judicial Circuit Judges have issued arbitrary and capricious rulings regarding joint custody and destroying families for attorneys' profits. Petitioner contends that this case is of such imperative public importance as to justify requiring an immediate determination in this Court which implicates child support guidelines. For the reasons outlined above and discussed in more detail below, this is plainly such a case. Parents faced with the loss of custody of their

children and children faced with the loss of an appropriate education due to their loss of guidance by their parents in our Nation may turn on this Court's resolution of the issues presented. And, due to the lack of checks and balances in Family Court in the State of Nevada, the U.S. Supreme Court's immediate intervention is warranted in order to ensure that the rule of law is adhered to in this time of great national concern.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The First Amendment to the Constitution of the U.S. provides, in pertinent part, that "Congress shall make no law...abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I. The Court has long recognized that the Amendment's Due Process Clause like its Fifth Amendment counterpart guarantees more than fair process. The Clause includes a substantive component that provides heightened protection against governmental interference with certain fundamental rights and liberty interests, and the liberty interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interest recognized by this Court.

The State of Nevada statute governing state-court orders of a change of primary custody to joint custody provides:
125.480 Best Interest of Child; preferences; considerations of court; presumption when court determines that parent or person residing with child is perpetrator of domestic violence.
1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that *joint custody* would be in the best interest of the child, the court may grant custody to the parties *jointly*.
2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.
3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:
a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application.

NRS 125.490 Joint custody.

1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.
3. For assistance in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted.

STATEMENT OF THE CASE

This petition seeks to remedy the State of Nevada Family Court's widespread and systemic infringement upon the emancipation of minor children and denying them equal protection under the law to the liberty interest in a parent's right to the care, custody and management of their children which is the preeminent constitutional right in this nation. The children's right to an appropriate education to be guided by their parents implicates uniquely important national liberty interests. The unequal and void for vagueness term of "joint custody" in Nevada wherein Family Court Judges issue temporary orders from primary to joint custody cases without *mandating* mediation on fundamental issues of the minor children's education and welfare is a patently unfair and fraudulent process that is having an impact far beyond Nevada's borders and that cries out for correction by this Court.
Victoria contends that Judge Gloria S. Sanchez's temporary order is unconstitutional on its face because it denies the minor children immediate determinations regarding constitutional issues of their education and welfare. That it denies parents substantive due process by permitting temporary orders of primary custodian rights into joint custody without the Nevada legislature defining its terms

thus making them void. Victoria also contends that the statute is facially unconstitutional because it does not require a showing that changing an order to joint custody is in the best interests of the children when it fails to define the term "joint custody" and denies the parties an opportunity to define for themselves what constitutes joint custody. That Victoria has been deprived of her fundamental right to a parent-child relationship. Victoria also maintains her procedural due process rights were infringed because she was not provided with notice, with an opportunity to be heard on a case by case basis; nor with a prompt determination of the children's constitutional issues of education and welfare when the Court issued its temporary order leaving Victoria and her children in legal limbo. That the Nevada Supreme Court chooses to abandon the standard of a preponderance of evidence when Victoria raises both substantive and procedural due process challenges to the Best Interests of the Children standard. Its inaction and silence is no surprise. Victoria contends that the Nevada Supreme Court fails in its obligation to determine whether her challenges allege a clearly established constitutional violation.

REASONS FOR GRANTING THE PETITION

State of Nevada fails to reasonably define "joint custody" under the Best Interests of the Children Standard. A 'fit parent' whose definition has not been defined by the State of Nevada stands under the same umbrella with a parent who has neglected, murdered, mentally, physically or sexually exploited their child when Nevada Family Court Judges issues orders for a change of primary custody to joint custody.

Sarah Giampa, was born on 12/11/87 and Marco Giampa, was born on August 15, 1989, and lived with both of their parents. The parties were married for 21 years. Charles Giampa filed for divorce in October of 1998. The parties stipulated to petitioner's fitness as a parent and was awarded primary custody 3 times.

On 12/13/04, Victoria contends that Attorney Bryce Duckworth abuses the legal process and uses Judge Gloria S. Sanchez's authority and power to shorten time in order to hear a holiday visitation matter and challenges the use of a procedure normally reserved for cases of an emergency nature. Victoria contends that no real emergency existed other than to abuse the legal process and churn litigation as a catalyst by the simple filing of an action to gain de facto custody and eventually gain primary physical custody. Victoria contends that it is the district court's jurisdiction to make short-term temporary adjustments to the parties' custody arrangement on an emergency basis to protect and safeguard a child's welfare and security and not to allow Attorney Duckworth to file an emergency motion for the minor children to travel alone without both parents to Chicago at the 12th hour of a Christmas holiday solely to churn litigation. Charles and his attorney fails to file for mediation first on parent-child *issues*. Victoria opposed the children traveling to Chicago over Charles' objection since he was purposely encouraging and rewarding their children's bad behavior. That it was not permissible for Judge Sanchez to assault Victoria's parental authority at a time when both minor children were in a vulnerable adolescent stage and having problems with school and delinquent behavior. That the court deliberately and

purposefully deprived Victoria of her fundamental parental right to enforce rules regarding their minor children's behavior.

On 1/20/05, Attorney Duckworth files Motion to Modify Custody *and [Motion to]* Resolve Parent-Child *Issues*. Victoria contends that Attorney Duckworth's cites rules when they benefit him and conveniently ignores them when they do not. Is Attorney Duckworth filing a *combined* MOTION TO *MODIFY CUSTODY* and a [*MOTION*] TO RESOLVE PARENT-CHILD *ISSUES*? If EDCR 5.81 mandates that " ...all contested family matters involving minor children ***must*** *be submitted to the judge prior to the setting of a trial date*; a request that the judge consider these issues is made *first* by filing of a motion to resolve parent-child issues." Attorney Duckworth gives Victoria improper notice for his Motion to Modify Custody... and files it untimely; and further, Judge Sanchez should have rescheduled the hearing. Victoria further questions Attorney Duckworth's motives and begs another question: Is Attorney Duckworth filing only *a [MOTION]* TO RESOLVE PARENT-CHILD *ISSUES*? If EDCR 2.20 mandates that "All motions must contain a notice of motion setting the same for hearing on a day when the judge to whom the case is assigned is hearing civil motions and *not less than 21 days from the date the motion is served and filed*," then Attorney Duckworth gives Victoria improper notice for filing a motion to change custody and violates EDCR 5.81(a), Resolution of Parent-Child Issues which allows for referral of the parties to the Family Mediation Center first to resolve disputes over custody which states in pertinent part:

Unless otherwise directed by the court, all contested family matters involving minor children ***must*** *be submitted to the judge prior to the setting of a trial date. A request that the judge consider these issues is made by the filing of a motion to resolve parent-child issues.*

Victoria contends that due process requires that notice be given before a party's substantial rights are affected and further contends that due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Victoria further contends that Attorney Duckworth blurs the distinction between the combined motions when he deviously cites

1. NRS 125.480 in his *[Motion]* To Resolve Parent Child *Issues*: ..in determining custody of a minor child, the sole consideration of the court is the best interest of the child;"

2. NRS 125.510 in his *[Motion]* To Resolve Parent-Child *Issues*: "...in determining custody of a minor child...the court may...during the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest;

3. *Murphy v. Murphy*, 84 Nev. 710, 447 P.2d 664 (1968), in his *[Motion]* To Resolve Parent-Child *Issues* which holds that: "A change in custody is warranted only when: (1) the circumstances of the parents have been materially altered;

and (2) the child's welfare would be substantially enhanced by the change.

On 8/25/05, **[App. FF]** over Victoria's objections, Judge Sanchez ordered the following:
"...that child custody shall be modified temporarily for purposes of stability, with the parties maintaining joint legal custody and shared physical custody, with Plaintiff maintaining primary physical custody..."

On 8/31/05, Dr. Louis Mortillaro conducts an evaluation of Marco.

On 9/6/05, Victoria files Motion for Reconsideration of *[Plaintiff's Motion For a Change of Custody and Motion For]* Parent-Child Issues. Hearing Date *(delayed 45 days)* to 10/20/05, 9:00 a.m. She argued that she was deprived of her fundamental right to parent her minor children; that Charles had not encouraged any type of a relationship; that the newly discovered evidence is that the minor children now reside at the Country Club Towers, that it was impossible and extremely difficult to overcome the emotional and physical distance between Victoria and her children; that Judge Sanchez' arbitrary and capricious ruling made any type of relationship with Victoria and her children non-existent which was clearly not in the best interest of the minor children.

On 10/12/05, pursuant to Court Order, Dr. Louis Mortillaro interviews Sarah. From 10/17/05 to 12/29/05, Victoria writes Dr. Mortillaro numerous letters expressing her concerns that the parties' minor children were left to live alone and without parental supervision at the Country Club

Towers. Victoria contends that in direct violation of Judge Sanchez's previous Court Order of 12/7/05, **[App. CC].** Dr. Mortillaro fails to communicate with Victoria regarding her concerns that the children were living alone without parental supervision, fails to address Marco's untreated ADHH, untreated anger issues, problems with receiving an appropriate education from a Christian High school as previously ordered by this Court, fails to follow through with counseling for Sarah's untreated problems with depression and an eating disorder, and other issues involving the children dropping out of school, and counseling for Victoria and her minor children, that the loss of custody and parenting her two children was directly caused by such prejudice. Victoria requests this Court take judicial notice that on 10/1/08 and on 4/10/09 **[App. C.]** Victoria filed with the Nevada State Board of Medical Examiners a complaint against Dr. Louis F. Mortillaro for violating Judge Sanchez's order and placing the Board on notice of the Temporary Restraining Order she had to resort in filing against her son Marco on 3/13/09 **[App. H]** which Victoria believes is due to Dr. Mortillaro's failure to communicate and following through with counseling which directly caused her to lose visitation and custody of her 2 minor children. Additionally, Victoria requests this Court take judicial notice that on 3/16/09 **[App. G].** Victoria writes a letter to Judge Mark Stevens, Henderson Traffic Court, and pleaded with this court to intervene on her behalf to help her son Marco and order anger management before returning over his driver's license.

On 7/19/07, Judge Sandra Pomrenze ignores Victoria's pleas to make short-term orders regarding the parties' minor children's welfare and ordered that "the daughter of the

parties will soon *emancipate* and there will be an issue regarding Child Support." Victoria challenged Judge Pomrenze's premature mandate that these minor children have not emancipated because they still have no capacity to contract for a rental agreement at the Country Club Towers; they are still subject to legal control by their father, because this Court has never conducted a hearing nor issued Orders declaring the minor children legally emancipated. That Judge Pomrenze chose to instead ignore the minor children's need for intervention into issues of education, psychological and medical needs.

On 3/28/06, **[App. AA]** Nevada Supreme Court ordered that "...the order does not finally resolve the parties' various motions and countermotions to modify custody...Once the district court enters a written order resolving these issues, appellant may appeal if she is *aggrieved*.

On 7/30/06, a hearing was held where Victoria withdrew her appeal in order to allow for reasonable discovery and an evidentiary hearing on custody and financial issues and Judge Sanchez summarily denied Victoria relief. **[App. Z]**.

On 10/22/08, Petitioner filed Permission to File an Extension of Time for the purpose of filing Permission for Leave to Amend Petition for Writ ....**[App. K]**. On 11/7/08 Victoria filed Supplement #1 of List of Exhibits in Support of Petitioner Victoria Giampa's Permission for Leave to Amend Petition for Writ ... **[App. J]**. On 10/15/07, Victoria filed Application for Petition for Writ... **[App. W]** and claims that at that time she set forth sufficient facts by a preponderance of evidence that demonstrate she has established a prima facie case for the issuance of such Writ.

At that time Victoria sought, but has been unable, for one reason or another, to obtain from Judge Pomrenze a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the 8/28/07 hearing. Victoria had cause for concern as to which motions will be heard and to what extent at the hearing scheduled for 8/28/07, and the Minute Order does not in any way identify or itemize the unheard and unresolved motions pending before Judge Pomrenze.

On 1/25/08, the Supreme Court issued its Order Dismissing Appeal **[App. S]** which states again that "Once the district court enters a written order resolving the NRCP 60(b) motion, appellant, if *aggrieved*, may file an appeal from that order. Accordingly, as we lack jurisdiction over this appeal, we Order this appeal Dismissed."

On 9/12/08, Victoria filed a Petition for Writ... **[App. M]** and outlined a timeline of the motions heard before Judge Pomrenze wherein she steadfastly refused to make any short-term orders concerning the minor children under the Best Interest of the Children standard.

On 10/2/08, the Supreme Court issued An Order Denying Petition for Writ... **[App. L]**, which states that a petition must also be supported by an affidavit of the party beneficially interested and must be served upon the respondent judge and all parties to the district court action and prevents her from seeking a special order after a final order as an *aggrieved person*. Victoria contends that although she did not 'attach' any exhibits to her 9/12/08...Petition for Writ.... **[App. M],** she fully satisfies the requirements of NRCP 21 by "making a statement of the

facts necessary to an understanding of the issues presented by the application, a statement of the issues presented and of the relief sought, a statement of the reasons why the Writ should issue, and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition" when she quoted and cited the pertinent opinions and the pertinent parts of the record from Judge Pomrenze's 3/7/08 Findings of Fact and Conclusions of Law Order **[App. R]** and quoted and cited the pertinent opinions and the pertinent parts of the record from the Nevada Supreme Court's 1/25/08 Order Dismissing Appeal **[App. S]** in her Writ. Victoria further contends that in the exercise of reasonable diligence she made sufficient reference to those Orders permitting the Nevada Supreme Court to consider it in respect to its rulings as to some of the claims presented. She set forth the substance of all of the evidence considered in the light of her contentions, supporting the conclusion that Judge Pomrenze and Judge Sanchez deliberately abused their discretion, commits misconduct, and supports the conclusion of fraud committed by Attorney Duckworth and his client, Charles, and thereafter, the Nevada Supreme Court summarily denied her relief and affirmed $1,500 in sanctions, **[App I & R]** Additionally, on 6/10/05, the Nevada Supreme Court issued Order Establishing Pilot Program In Civil Appeals wherein it issued Orders which would allow liberal pleadings drafted by in-proper persons and suspended NRAP 46(b) for cases processed throughout the pilot program.

Victoria contends that the Supreme Court fails to exercise its obligation to consider Victoria's writ petitions when important issues of law need clarification and this court's review would serve considerations of public policy, sound

judicial economy and administration. Victoria further contends that she has satisfied her heavy burden of proving a "clear and indisputable" right to mandamus relief of some of the following factors recognized in *Bauman v. U.S. Dist. Court,* 557 F.2d 650 (9th Cir.1977) when she presented the following questions to the Nevada Supreme Court and was summarily denied relief to the following constitutional questions:

Whether Victoria has adequate means of attaining the desired relief, such as a direct appeal?
Victoria contends that the Nevada Supreme Court deliberately ignores Victoria's Writ of Mandamus when she argues that Judge Pomrenze fails to abide by the Nevada Supreme Court's 1/25/08 Order which prevents Victoria from filing her motion to seek a final appealable order pursuant to NRCP 60(b) and to properly proceed as an *aggrieved person.* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981); that "the judge has an obligation, part of her sworn duty as a judge, to hear and decide cases properly before her." Judge Pomrenze "is not at liberty, nor does she have the right, to take herself out of a case and burden another judge with her responsibility without good and legal cause." *Ham v. District Court*, 93 Nev. 409, 415, 566 P.2d 420, 424 (1977). *In re Lemoine*, 686 So.2d 837, 840 (La. 1997). Judge Pomrenze deliberately and purposefully refuses to issue Orders and prejudices Victoria's right to allow her to file her motion and ultimately file an appeal as an *aggrieved person*, *Barry v. Lindner*, 119 Nev. 661, 669, 81 P.3d 537, 542-43 (2003). On 12/5/05 Victoria filed Reply to Plaintiff's Opposition to Defendant's Motion to Set Aside Temporary Order for Change of Physical Custody Pursuant to NRCP 60(b) **[App. DD]** and

thereafter, Judge Pomrenze summarily denied Victoria from seeking a final appealable order.

Whether Judge Pomrenze's Order raises new and important problems or issues of law of first impression when she deems Victoria a vexatious litigator and prejudices and restricts her right to file pleadings in defense of fraud committed by Charles and his counsel of record Attorney Duckworth?

At the 12/27/07 Hearing, Judge Pomrenze issues Orders and on 3/7/08 **[App. R.]** declares Victoria a vexatious litigant. Victoria argues that Attorney Duckworth disregards Chief District Court Judge Kathy A. Hardcastle's 7/20/07 unappealed and unchallenged Order when she declares that Victoria is not a vexatious litigant and proceeds to file his motion anyway requesting Judge Pomrenze to declare Victoria a vexatious litigant under legal theories he thought would ultimately prevail. Nevada Courts have recognized in *Rohlfing v. District Court,* 106 Nev. 902, 803 P.2d 659 (1990) that generally a district judge has no authority to review another judge's order. Judge Sanchez, on 2/11/04, made opposite statements about Victoria's ability to file motions. Throughout the history of this case, Judge Sanchez never deemed Victoria a vexatious litigator, never found her pleadings to be without merit, and declared her a well-informed pro per litigant which proves Judge Pomrenze of bias and prejudice.

Whether Judge Sanchez's and Judge Pomrenze's Orders sanctioning Victoria as a defendant amounts to criminal sanctions and justifies abridging Victoria's 14th Amendment right to the care, custody,

and management of her children and thus, clearly erroneous as a matter of law when Attorney Duckworth and Charles commits fraud upon the court?

Victoria further argues that even though Judge Pomrenze may as a general rule restrict her access to filing papers, constitutional considerations prohibit a complete ban on Victoria's filings if the ban prevents her from a fundamental liberty interest as a parent in the care custody, and management of her child which is protected by the Fourteenth Amendment, and that such Orders are impermissible, *Sullivan v. District Court*, 111 Nev. 1367, 904 P.2d 1039 (1995). Victoria further contends that writ petitioners are also more suitable for review of sanctions and that the Nevada Courts have recognized that an attorney could challenge sanctions only by extraordinary writ, *Albany v. Arcata Assoc.*, 106 Nev. 688, 799 P.2d 566 (1990). A writ petition permits the court this flexibility because the court retains jurisdiction over the order during the pendency of the writ petition. Victoria set forth a review of the history of massive sanctions imposed against her by this Court that she defends as unconscionable and outrageous. Since then, Victoria has sought, but has been unable, for one reason or another, to obtain from Judge Pomrenze a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the 8/28/07 hearing.

On 8/28/07, **[App. X]** without proper authority, Judge Pomrenze vacates certain hearing dates, and further alleges that she has reasonable cause for overall concern for the correct direction of this case because she has pled a prima

facie case establishing fraud upon the court, and, therefore, she should be allowed her day in court to obtain the appropriate court Order(s). Given that the salutary purpose of NRCP 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party, she should have been granted a hearing.

Whether Judge Sanchez's and Judge Pomrenze's conduct abridges Victoria's 14th Amendment right to the care, custody and management of her minor children thereby deliberately and purposefully abandoning equal protection of the law for a protected class of individuals?

Victoria contends that Judge Pomrenze's conduct demonstrates bias when she fails and refuses to act reasonably and responsibly towards the parties' minor children. NRS 125.480 requires that the parties and this court act at all times in the best interests of the minor children. On 8/28/07, Judge Pomrenze found that the Court could do nothing for her in terms of relief for past custody violations and ignored the *children's welfare* under the Best Interests of the Children standard and quickly switched to the issue of money damages as follows:

Judge Pomrenze: All of – everything that happened with the children predates my entry into the case, but anything I can do now has to recognize that the children ***have aged out,*** *okay, if you will. Okay? Not much I can do about the children now. They're either going to be happy, healthy adults or they're not and I have to go, sorry, it's too late for me to be able to step in their best interest.*

Judge Pomrenze: I mean, the main issue see to me is what has happened to these kids here, but now it's too late. It's unfortunate, but it is too late. And Marco is going to do what he's going to do and Sarah is going to go do what she's going to do.
Judge Pomrenze: Ma'am, I look at violations at the time they occurred. I don't look at them necessarily but I just want you to understand at this point in time I'm getting this case, which is now as I said, a multi-bucket case, so far from me being able to address those issues because, unfortunately now these children are close -- one's emancipated and the other one is going to emancipate in four weeks. There is really not much I can do to issue Orders to remedy how Marco may have been raised. Okay. It's just too late - it is - as a practical matter. And I want you to understand that that's too late. Does that mean I cannot sanction a party for violating Orders?

Whether Victoria's appeals may be abandoned by Judge Pomrenze and the Nevada Supreme Court, and as a result of such abandonment divests them of authority to consider its merits?

Victoria further contends that Charles' response and opposition is legally insufficient and unable to sustain a viable objection in these proceedings and his responsive papers are categorically frivolous and meritless all done to aid, facilitate and to perpetuate fraud upon the Court. NRCP 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party," *Nevada Industrial Dev. v. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987).

Whether Victoria will be damaged in a way not correctable on appeal?

On 1/15/08, the Supreme Court issues an Order Denying Rehearing **[App. T]** which states that "To the extent that the challenged order resolves motions regarding custody of the children and could thus be viewed as a special order after final judgment and therefore appealable under *Burton v. Burton*, 99 Nev. 698, 669 P.2d 703 (1983), the denial of these motions would necessarily be summarily affirmed based on the district court's finding that the children are adults." Victoria contends that the court has previously held that "a petitioner is damaged or prejudiced if his claim will be moot on appeal." *SG Cowen Sec. Corp. v. U.S. Dist. Court*, 189 F.3d 909, 913 (9th Cir. 1999). Victoria filed Motion to Stay and has demonstrated that she has no alternative means of relief and will suffer harm that is not correctable on appeal.

Whether Judge Sanchez and Judge Pomrenze manifests a pattern and practice of persistent *delay* and favoritism to Attorney Duckworth when he commits fraud upon the court which deprived Victoria and her minor children a prompt resolution regarding the best interest of the children statute?

Victoria argues in her Writ that the change of custody proceedings of Marco is invalid due to myriad substantive and procedural defects and all Orders should be set aside. Judge Sanchez failed to evaluate Marco's change of child custody proceedings on its own unique facts and on a *case by case basis and unlawfully combines the contaminated change of custody proceedings of Marco with the change of*

custody proceedings of Sarah. Victoria contends that in *Christy v. Carlisle*, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978), this court stated: "It is our underlying policy to have each case decided upon its merits." Victoria argues that the district courts have the inherent power to set aside judgments procured by extrinsic fraud. *Lauer v. District Court*, 62 Nev. 78, 140 P.2d 953 (1943). Victoria contends that because Judge Sanchez failed to make separate Findings of Fact and Conclusions of Law **[App. FF]** on the merits in the 1st change of custody proceedings of Marco that Attorney Duckworth's 2nd Motion to Modify Custody of Sarah filed on 7/19/05, must fail and is also void. Victoria argues that Attorney Duckworth intends his REPLY TO DEFENDANT'S RESPONSE AND OBJECTION TO PLAINTIFF'S MOTION TO *[MODIFY CUSTODY AND TO]* RESOLVE PARENT-CHILD *ISSUES* serve as a reminder to the Court that the time for filing a Reply had passed. Attorney Duckworth has the basest of motives when he callously disregards the violations he commits when he files his tardy ***REPLY....*** and belatedly cites the Nevada Revised Statute regarding a **modification of custody** in his MOTION TO RESOLVE-PARENT CHILD *ISSUES.* Victoria argues he purposefully and deliberately violates the Eighth District Court Rule 5.12(a) when he obtains evaluations from (2) psychiatrists without a Court Order in anticipation of filing a Motion For a Change of Custody of Marco. Victoria's loss of parenting both her minor children was directly caused by such fraudulent act. Judge Sanchez's act of misconduct occurs again when she deliberately ignores Attorney Duckworth's violation of Nevada Rules of Civil Procedure when he presents a Motion for Order Shortening time on a parent/child issue that should have been mediated first pursuant to EDCR 5.81

which now is the catalyst for a full-blown change of primary custody. Attorney Duckworth undertook another scheme to defraud the Court in intentionally *combining* the Motion to *Modify Custody* of Sarah with a *Motion to Resolve* Parent-Child *Issues* without first filing for mediation. Victoria argues that with the help of this Court, Attorney Duckworth and Charles commits fraud upon the court which attempts to defile the court itself or is a fraud perpetrated by officers of the court. *Appling v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769, 780 (9th Cir.2003). He commits an abuse of process which is consistent with his pattern of misconduct and fraud when he violates Victoria's fundamental procedural due process rights without giving her proper independent notice and an opportunity to be heard on each individual motion and when he fraudulently combines the contaminated custody proceedings of Marco into *one* contaminated custody proceeding. Judge Sanchez has a pattern and practice of acting in bad faith, willful misconduct, and manifestly abuses her discretion when she deliberately violates judicial canons and acts contrary to the best interests of the minor children in spite of such knowledge. *Nichols v. Nichols*, 91 Nev. 479, 537 P.2d 1196 (1975). She displays an extreme showing of willful misconduct that would permit manipulation of the court and significantly impede the judicial process and the administration of justice." The Nevada Legislature has defined willful misconduct in NRS 1.4653(4)(b). On 10/26/98, the Judicial Commission disciplined Judge Sanchez for violating the very same judicial, Canon 3B(8): "A judge shall dispose of all judicial matters promptly, efficiently and fairly."

Whether Judge Sanchez and Judge Pomrenze deprives Victoria and her children substantive and procedural due process and principles of equal protection for a protected class of individuals which raises new and important problems or issues of law of first impression?

On 7/16/08, **[App. N]** and 9/3/08, **[App. O]** Victoria challenges the constitutionality of the Best Interests of the Children standard. She further argues that NRS 425.480 contains a neutral classification of the best interest of only *minor children,* and further challenges Judge Sanchez's and Judge Pomrenze's unevenhanded application of "emancipation" as a device designed to impose a different burden on different classes of persons. That NRS 125.510 as interpreted by the court violates principles of equal protection by discrimination based on children's 'ages.' That a pattern and practice exists in Family Court manifested by Judge Sanchez's and Judge Pomrenze's orders which discriminates against a suspect class of children and infringes on their fundamental rights as "minor children" since both judges were quick to rush the minor children into early emancipation rather than make short-term orders regarding their welfare and education. That Judge Sanchez commits error by *applying* NRS 125.490 in a joint physical custody arrangement when the Nevada Legislature had not yet fully addressed the issue of *defining* "joint physical custody." That the statute is void for vagueness when it fails to address the definition of "joint custody," fails to make a distinction between sharing parental responsibility in major decision-making matters and sharing responsibility for providing a home for the children. That Judge Sanchez with deliberate indifference

infringed on Victoria's *procedural due process rights* by depriving her of proper notice and the opportunity to be heard without issuing independent Findings of Facts and Conclusions of Law based on the factors outlined in NRS 125.490, Joint Custody, and that all Court Orders issued are void. Based on such willful misconduct, a pattern and practice of fraud and delay, which prejudices Victoria's rights, she requested that all orders be set aside.

Victoria argues that the Nevada Supreme Court commits error in not addressing unconstitutional the State's procedures for changing primary custody to joint custody since Nevada's procedures are inconsistent with the constitutional guarantees when it fails to define joint custody. Testing State of Nevada's procedures under a due process claim requires a balancing of 1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the state's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldrige*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18; *Smith v. Organization of Foster Families*, 431 U.S. 816, 848-849, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977). Notwithstanding the minor children's liberty interest in not being supervised by either parent or left alone unnecessarily, and assuming that Victoria a parent - who has traditional interests in and responsibility for the upbringing of her children - retains a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse. The State of Nevada has significant interests in and

a duty in not allowing Family Court to impose unnecessary procedural obstacles that may discourage a parent from seeking custody and in allocating priority to emergency appeals as soon as the Supreme Court is apprised that a problem arises with a minor child's welfare rather than a parent having to spend time in filing writs, filing extensions of time, and filing proper person appeal statements. **[App. F, K, L, P, U]** The risk of error inherent in Victoria's decision to file an emergency appeal **[App. EE]** for her children's welfare is sufficiently great that some kind of immediate inquiry should have been made to determine whether the statutory requirements for "the sole consideration of the court is the best interest of the child" to determine whether the statutory requirements for its terms are satisfied and to inquire into the child's welfare for risk of harm. The State of Nevada ignored Judge Sanchez when she fails in her duty to refuse to change custody of Victoria's children who do not satisfy the standards for a change of custody. Due process did not include a thorough investigation before mandatory mediation followed by additional periodic reviews of her children's welfare which would have identified Marco or Sarah who were at risk of harm. Risk of error would have been significantly reduced by conducting mandatory mediation. However, the State of Nevada's change of custody practices do not conform with minimum due process requirements. Nevada State Statutes do not mandate a careful and thorough investigation nor mandatory mediation before a change of custody. Nevada's procedures are arbitrary in the sense that a single judge has the unbridled discretion to submit Marco to an interview by a social worker and based on that single interview has the unbridled discretion to recommend a change of custody.

While Nevada's statutory procedures for a change of custody is unconstitutional, since it fails to define "joint custody" and fails to allow the parties mandatory mediation, the independent psychological decision making process regarding counseling and psychological therapy for the parties, which includes a psychiatric evaluation, was not followed up by Dr. Mortillaro and as such prejudiced Victoria and her children.

Victoria argues that Nevada's procedures for a change of custody from primary to joint custody of minor children under the age of 18 violate the Due Process Clause of the Fourteenth Amendment **[App. N & O]** and requests an injunction against their future enforcement. Victoria rejects Nevada's entire system of changing child custody on both procedural and substantive grounds. Victoria argues that Nevada's statutory procedure for a change of custody is unconstitutional since it constitutes a severe deprivation of the children's liberty interests. The United States Supreme Court has made it clear that constitutional rights apply to minor children as well as adults. As the court stated *In re Gault*, 387 U.S. 1 (1967), "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." The Supreme Court stated in *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52 (1976), "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. The court defined this liberty interest in terms of a relationship of love and duty in a family unit which is a liberty interest entitled to constitutional protection, *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed. 2d 599 (1982). The Courts have also determined that a liberty interest is implicated if the ban prevents her from a fundamental liberty interest as

a parent in the care custody, and management of her child which is protected by the Fourteenth Amendment, and that such Orders are impermissible, *Sullivan v. District Court*, 111 Nev. 1367, 904 P.2d 1039

Victoria further argues that the Nevada Supreme Court's lack of intervention was insufficient to protect her children's liberty interest. Victoria argues that Dr. Mortillaro's refusal to communicate with her, coupled with the Court's *scheduling dates which delayed the hearings*, made the Court's decision too arbitrary to satisfy due process. Victoria argues that with respect to substantive due process, the Nevada Supreme Court fails in its obligations to address any substantive due process violations against Victoria and her children. Time and time again, Victoria turned to the Nevada Supreme Court for assistance and guidance and it fails in its obligation to order the Court to investigate any of Victoria's constitutional claims that the children were left alone without parental supervision. Victoria argues that the State of Nevada ignores the obvious and that is a significant interest in a continuing duty to protect the minor children under the best interest of the children standard. The Court has ruled that a balancing of interests is conducted to determine when procedural due process protections are warranted. These are the private interests impacted by the government action, the chance that the procedures used will result in an erroneous deprivation, the likely value of added protections, and the financial and administrative burdens of additional protections. *Mathews*. Here in applying the balancing test, the Nevada Supreme Court fails to investigate claims of fraud upon the court regarding the change of custody of the parties' minor children and the loss of Victoria's liberty interests in her

parent-child relationship as a result of the change of custody without notice or an opportunity to be heard. The United States Supreme Court has stated that "there is a presumption that 'fit' parents act in the best interests of their children." *Troxel v. Granville*, 530 U.S. 57, 68, 120 S.Ct. 2054, 147 L.Ed. 2d 49 (2000). The Nevada Statutes fails to define what a 'fit' parent is and Judge Sanchez nor Dr. Mortillaro declared Victoria an unfit parent. Yet, the court ignored her pleas that Charles had dumped the children in their own apartment and that they were left alone without parental supervision.

On 3/16/09 Victoria filed Petition to Seek Permission to Correct a Clerical Mistake... **[App. F]** VICTORIA contends that the *Rivero*[1] case is *suspect* in that no mention is made of a timeline. Likewise in *Ellis*[2] no mention is made whether the parties were afforded an opportunity to mediate constitutional issues first such as the children's education and welfare and to define for themselves what constitutes "joint custody" and to allow the parents their fundamental right to enter into a parental stipulation which may be used as child support guidelines before Carucci filed for a motion for a change of custody. VICTORIA contends that the Nevada Supreme Court's failure to reasonably define "joint custody" makes all such orders in VICTORIA'S case void and any other orders in other cases also void.

CONCLUSION

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[1] Rivero v. Rivero, 195 P.3d 328 (2008).
[2] Ellis v. Carucci, 161 P.3d 239 (2007).

For the above reasons, petitioner respectfully requests that her petition for a writ of certiorari be granted.

AFFIDAVIT

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

Victoria Giampa, being first being duly sworn, deposes and says:

1. That I have personal knowledge of all facts stated herein, except those facts stated to based on information and belief. If called to do so, I could and would competently testify to the truth of the facts stated herein, except those facts stated to be based upon information and belief;

2. That the Nevada Supreme Court fails in its duty to address the unreasonable and unnecessary bias and prejudice committed by Judge Sanchez and Judge Pomrenze when they violate Victoria's right to due process and access to this Court, which directly and proximately caused substantial injury and harm to her and her children;

3. That the Nevada Supreme Court fails to address Attorney Duckworth's papers which are devoid of points and authorities and thereby continually encouraging his manipulative pleading practices;

4. That the Nevada Supreme Court fails in its duty to address violations of the Best Interest of the Children standard when Charles is complicit in and contracts for his attorney's unprofessional tactics and culpable conduct in committing fraud upon the court when Attorney Duckworth from the law firm of Smith Larsen & Wixom unlawfully combines a *contaminated* modification of the 1st change of custody of Marco with the 2nd change of custody of Sarah

and unlawfully denies proper notice of a change of custody of Sarah;

5. That the Nevada Supreme Court fails in its duty to address procedural due process violations when Attorney Duckworth, with Judge Sanchez' help, deliberately and purposefully fails to file *first* for mediation on *parent/child issues* for Sarah and deliberately and purposefully fails to file a separate Notice and Hearing Date for a change of custody. This can hardly be considered proper notice for a hearing that would result in Victoria losing custody and visitation with her children;

6. That the Nevada Supreme Court fails in its duty to address its own orders that Victoria seek a final order from Judge Pomrenze which includes Victoria's Motions pursuant to NRCP 60(b);

7. That Victoria believes the Nevada Supreme Court deliberately ignores Judge Pomrenze when she fails to follow factors in the De Long case and declares *defendant* Victoria a vexatious litigant violating Victoria's 14th Amendment right to the care, custody and management of her children;

8. That Victoria's Petition for Rehearing is not moot because it presents important questions of a general challenge to the constitutional law of Nevada and decisions by the Nevada Legislature in the future;

9. That the Nevada Supreme Court invalidates the Best Interest of the Children Statute because it is void for vagueness and since the Nevada Legislature has not yet defined what "joint custody" is, then the (2) sentences are incompatible with each other's principals and all orders issued by the Eighth Judicial District Court Judges of the

State of Nevada should also be ordered void when they ignored Victoria's challenge to the statute;

10. That the Nevada Supreme Court ignores Judge Sanchez's and Judge Pomrenze's rulings when they make age-based distinctions of the minor children that violates the Equal Protection Clause;

11. Victoria further believes that with complete indifference, the Nevada Supreme Court and the State of Nevada Legislature deliberately violates NRS 125.480 by ignoring the statutes and rushing the minor children into early emancipation without procedural due process notice and an opportunity to be heard; thus, denying the minor children a relationship with their mother which totally deprived her of rights and responsibilities of child rearing;

12. That the Nevada Legislature should change the language in the Best Interest of the Children Statute to read **"joint intent"** instead of **"joint custody"** to allow the parties the freedom, without state interference, to decide what constitutes 'joint custody' which would allow parents their fundamental right to enter into a parental stipulation which may be used as child support guidelines;

13. That unconstitutional procedures are currently being used in Family Court in the State of Nevada and are leaving thousands of victims without any voice and without any redress in apparent efforts of attorneys' own fortune, enrichment and greed, and requests the U.S. Supreme Court take judicial notice of Albright v. Albright, Case No. D193637. Donna, a 'fit' parent, lost visitation and custody of her children, in a similar fact-pattern scenario, Case No. D193637, before Judge Cynthia Steele. Dale Albright abducted the minor children and moved to the State of Washington without first filing for mediation or filing a motion for a change of custody. Donna has lost all contact

with her 2 children, and has been diagnosed with rheumatoid arthritis and post-traumatic stress. Haddock v. Haddock, Case No. D321651. Rene paid $120,000 to 5 attorneys for fees to enforce child and spousal support. Judge Stephanie Miley deliberately violates the Nevada Revised Statutes and issues an Order that a California realtor, who does not hold a Nevada real estate license, receive a 6% commission. Rene immediately files a lis pendens to try to protect her one and only asset – her home. Thereafter, Judge Miley finds Rene in contempt and jails her for 3 days. She immediately files an appeal and thereafter, the Nevada Supreme Court ignores fraud upon the court, summarily dismisses her appeal, vacates her motions, denies spousal support and forces her file with the District Attorney to enforce child support. Rene has been diagnosed with post-traumatic stress.

14. Victoria believes that she finally escaped from *Hell Hole No. 5, Nevada Courts*, a phrase coined by the American Tort Reform Association, and that left behind are her 2 children Marco and Sarah who have lost out on the nurturing and emotional support of their mother, building family traditions, sharing dinner and time, belonging and connecting;

15. That Judge Sanchez, Judge Pomrenze, Attorney Duckworth, and Charles shut their eyes to the ugly reality that the parties' 2 minor children were living alone and unsupervised at the Country Club Towers;

16. Victoria is gravely concerned that the Nevada Supreme Court since 2005 failed to investigate any of her allegations that the children were living alone without parental supervision or at any point sought formal authority to pursue them;

17. That time and time again, the Nevada Supreme Court summarily dismissed Victoria's Petitions for Writs as either "failing to make any *salient* argument," the children are *now* adults," or "we are not persuaded that rehearing is warranted as we did not overlook or misapprehend any matter in the original petition.," and yet fails to address constitutional issues that the parties' children were left alone and without parental supervision ignoring the preponderance of evidence that they were not guided by their parent to receive an appropriate education as previously ordered by Judge Sanchez;

18. Victoria has confronted the inequities and abduction of her children with resolve, standing up to the injustice that permeates Family Court. Victoria prays that the United States Supreme Court issue an immediate review of the unconstitutional procedures that are currently being used in the State of Nevada, Family Court, in an apparent effort to emancipate children before the age of majority thereby denying parents the care, custody and management of their minor children and denying the children a liberty interest to be guided by their parent to an appropriate education.

DATED this 4th day of AUGUST, 2009.

Victoria Giampa

State: Nevada County: Clark

SUBSCRIBED and SWORN to before me this 4th day of AUGUST 2009.

NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
SCOTT LISH
No: 04-93367-1
My Appointment Expires Nov. 23, 2012

143

(1) Supreme Court, U.S.
FILED

09-502 JUL 8 - 2009

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

VICTORIA GIAMPA,

Petitioner,

vs.

BRYCE C. DUCKWORTH, ESQ., SMITH, LARSEN & WIXOM; CHARLES F. GIAMPA; DISTRICT COURT JUDGE GLORIA SANCHEZ; DISTRICT COURT JUDGE SANDRA L. POMRENZE; DR. LOUIS MORTILLARO; THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; NEVADA SUPREME COURT; NEVADA STATE LEGISLATURE,

Respondents.

APPENDICES I

PETITION FOR WRIT OF CERTIORARI

Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Proper Person

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GG	6/21/05	NV Supr. Ct. Order	2

HH	6/16/05	NV Supr. Ct. Order of Affirmance	2
II	6/16/05	NV Supr. Ct. Order Dismissing Appeal	2

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: June 03, 2009
Tracie K. Lindeman
Clerk of Supreme Court
No. 51422

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).
It is so ORDERED. [1]

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons, J.

cc: Eighth Judicial District Court Dept. 3, District Judge,
Family Court Division, Victoria Margaret Giampa,
Smith Larsen & Wixom, Eighth District Court Clerk

[1] We grant appellant's April 9, 2009 motion to correct her rehearing petition and have considered her amended arguments in resolving this petition.

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Petitioner,
v.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND, THE HONORABLE SANDRA L. POMRENZE, DISTRICT JUDGE, FAMILY COURT DIVISION,
Respondents,
and
CHARLES F. GIAMPA,
Real Party in Interest.

Supreme Court No. 52424

District Court
Case No. D224029

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES

The decision and Order of the court in this matter having been entered on 10/2/08, and the petition for rehearing having been denied, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: May 5, 2009

Tracie Lindeman, Clerk of the Court

By: A. Ingersol
Deputy Clerk

cc: Eighth Judicial District Court Dept. E.,
District Judge
Edward A. Friedland, Clark District Court Clerk
Smith Larsen & Wixom
Victoria Margaret Giampa

DATE: April 10, 2009

TO: Nevada State Board of Medical Examiners
State of Nevada
P.O.B. 7328
Reno, Nevada 89510
775·688·2559

FROM: Victoria Giampa
1848 Wellington Court
Henderson, NV 8901
702·434·9027

RE: October 1, 2008

COMPLAINT AGAINST
DR. LOUIS F. MORTILLARO, PhD
501 S. Rancho Drive
Las Vegas, Nevada

VICTORIA GIAMPA

4-10.09
DATE

On October 1, 2008 I filed a complaint against Dr. Louis Mortillaro with the Nevada State Board of Medical Examination for Dr. Mortillaro deliberately failing to communicate with me and failing to provide a plan tailored to address the unique facts of my family as outlined in his report pursuant to Judge Gloria Sanchez' Order. I further argued that Dr. Mortillaro deliberately failed to make a good faith effort to address my family's problems through therapy and deliberately failed to maintain reasonable contact with me after conducting an interview. I argued that such denial of psychiatric services was directly caused by Dr. Mortillaro's acts of bad faith which directly caused me to lose custody and visitation of my two minor children.

I further argued that Dr. Mortillaro inadequately addressed Marco's untreated ADHD, untreated anger issues, and problems with receiving an appropriate education from a Christian school as previously Ordered by the Court. Dr. Mortillaro deliberately failed to make any reasonable efforts to assist me and my children to maintain a familial relationship. My loss of parenting my two children was directly caused by such prejudice.

I further argued that Dr. Mortillaro deliberately failed to communicate with me when I obtained evidence from the Metropolitan Police Department that Charles Giampa, our children's father, left the children home alone without parental supervision at the Country Club Towers. Nor did Dr. Mortillaro inquire into Marco's diagnosis of ADHD and living alone without parental supervision which would justify his poor behavior with his mother, teachers, friends, and his sister.

I still contend that Dr. Mortillaro failed to perform to the State of Nevada's minimum professional standards for psychologists and was negligent in his failure to investigate further into my concerns that Charles shunned our children and left them to live alone and without parental supervision at the Country Club Towers.

I cited the policy behind NRS 125.480, Best interest of child... which is to ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage and to encourage the parents to share the rights and responsibilities of child rearing.

1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS: (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and....

I further argue that as a result of Dr. Mortillaro failing to follow through on communicating with me concerning the parties' custody arrangement, to try to protect and safeguard my children's welfare, which includes treatment for Marco's ADHD and for both children receiving an education from a traditional high school as previously ordered by this Court and other issues involving Sarah's depression and her need for an appropriate education, that Dr. Mortillaro ignores both minor children's welfare

pursuant to NRS 125.510 9(b) which states in pertinent part:

> 9. Except where a contract providing otherwise has been executed pursuant to NRS 123.080, the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases:
> (b) When the child reaches 18 years of age if he is no longer enrolled in high school, otherwise, when he reaches 19 years of age.

I am writing this letter to follow up on the complaint I filed against Dr. Mortillaro and to place this Board on notice that I had to resort to filing a Temporary Restraining Order against my son, Marco. I have for years attempted to get help from Judge Gloria Sanchez and psychiatric help from Dr. Mortillaro for both of my children and both Judge Sanchez and Dr. Mortillaro ignored my pleas.

On March 16, 2009 I contacted Family Court and placed them on notice and pleaded with them to file a Temporary Restraining Order against my son Marco for his poor behavior which has escalated resulting in an incident that occurred on February 9, 2009. [Exhibit No. 1]

On March 16, 2009 I wrote a letter to the Henderson Police Department placing authorities on notice that Marco needs psychiatric help immediately to deal with his rage. Marco's father has legal control of our son and because of Charles' extreme guilt has over-indulged our son without giving him consequences.
[Exhibit 1]

What has happened to my son is a direct result of Dr. Mortillaro's negligence in refusing time and time again to ignore Marco's psychiatric problems.

This letter is a notice to the Nevada Board of Medical Examiners of evidence of my son's behavioral problems and the TPO I filed against him. The Temporary Restraining Order is for the Board's consideration in making its determination to suspend or to revoke Dr. Mortillaro's psychiatric license for his negligence in his failure to investigate further into my concerns that Charles shunned our children and left them to live alone and without parental supervision at the Country Club Towers and for his negligence in failing to provide psychiatric treatment for my family.

In addition, why has the Nevada Board of Medical Examiners taken more than 7 months to make its determination on overwhelming evidence I submitted to the Board concerning the following:

- suspension or revocation of Dr. Louis F. Mortillaro's license to practice psychology;
- order psychiatric counseling for the parties to assist in reunification services; and
- devise a plan so Victoria and her children can reunify and thereby achieve the goal of family preservation.

///
///
///

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: April 09, 2009

Tracie K. Lindeman
Clerk of Supreme Court

No. 51422
No. 52424

VICTORIA GIAMPA,
Petitioner,
v.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND, THE HONORABLE SANDRA L. POMRENZE, DISTRICT JUDGE, FAMILY COURT DIVISION,
Respondents,
and
CHARLES F. GIAMPA,
Real Party in Interest.

ORDER DENYING REHEARING IN DOCKET NO. 52424 AND TRANSFERRING PETITION AND MOTION TO DOCKET NO. 51422

On October 24, 2008, petition filed a motion for an extension of time to file a motion to amend her writ petition or alternatively, to seek rehearing of the Order Denying

Petition for Writ of Mandamus or Prohibition entered by a pane. Of this court on October 2, 2008, and she has submitted a motion to amend, or alternatively petition for rehearing, and an appendix. The certificate of service indicates that the motion was mailed one day late. See NRAP 49(a)(1); NRAP 25(1)(1). We construe the motion as one seeking an extension of time to file a rehearing petition, and we grant the motion and direct the clerk of the court to file the petition received on October 24, 2008.

Having reviewed the petition, we are not persuaded that rehearing is warranted as we did not overlook or misapprehend any matter in the original petition. NRAP 49(c). Complete documentation in original writ petitions addressed to this court is necessary because, unlike in an appeal, this court has no record of the proceedings in the district court. See Pan v Dist. Ct., 120 Nev. 222, 229, 88 P.3d 840, 844 (2004); see also NRAP 21(a) (detailing petitioner's burden in original writ petitions). A rearing petition is not an appropriate vehicle for petition to remedy her failure to provide sufficient documentation in her original petition. Moreover, while the limited information in the belatedly submitted appendix indicates that the district court may not have followed the proper procedure for declaring petitioner to be a vexatious litigant, see Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 60-62, 110 P.3d 30, 42-44 (2005), abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev._____, 181 P.3d 670 (2008), there is insufficient information before this court to justify our extraordinary intervention at this time. Accordingly, rehearing is not warranted and we deny the petition.

On March 12, 2009, this court received a proper person petition for rehearing. The petition did not bear a docket number, and the caption reflected the caption for Docket No. 52424; accordingly, the petition was docketed in that matter. Further review of the petition, as well as a March 7, 2009, motion, indicates that the petition and motion concern the appeal in Docket No. 51422. Accordingly, we direct the clerk of this court to strike the petition and motion fro Docket No. 52424 and refile them in Docket No. 51422.

It is so ORDERED. [1]

_____, J.
Cherry

_____, J.
Saitta

[1] The disposition in this case was entered before January 1, 2009. Only those justices remaining on the court who participated in that decision have participated in this rehearing petition..

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: April 09, 2009

Tracie K. Lindeman
Clerk of Supreme Court

No. 51422

ORDER RECALLING

On February 20, 2009, we affirmed the district court's order awarding attorney fees and dismissed the remainder of this appeal. On March 12, 2009, this court received a rehearing petition with no docket number and bearing the caption of a related writ petition rather than this appeal. A similarly captioned motion was filed on March 17, 2009. After further review indicated that the rehearing petition and motion concerned this appeal, the documents were transferred to this appeal.

Inasmuch as the rehearing petition was timely, although improperly captioned, we recall the remittitur in this appeal, pending resolution of the rehearing petition. NRAP 41(a).

It is so ORDERED.

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. E., District Judge, Family Court Division, Victoria Margaret Giampa, Smith Larsen & Wixom, Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and DISTRICT COURT JUDGE SANDRA L. POMRENZE,

Respondent.

and

CHARLES F. GIAMPA,

Real Party In Interest.

Received
Las Vegas Drop Box
Clerk of Supreme Court
March 16, 2009

District Court
Case No: 98-D224029
Nevada Supreme
Court No.:

Oral Argument Requested:
YES

VICTORIA GIAMPA'S PETITION TO SEEK PERMISSION TO CORRECT A CLERICAL MISTAKE AND/OR CLARIFICATION PURSUANT TO NRCP 60(a) TO PETITIONER VICTORIA GIAMPA'S PETITION FOR REHEARING

COMES NOW, PETITIONER VICTORIA GIAMPA (hereinafter VICTORIA), In Proper Person, PETITION TO SEEK PERMISSION TO CORRECT A CLERICAL MISTAKE AND/OR CLARIFICATION PURSUANT TO NRCP 60(a) TO PETITIONER VICTORIA GIAMPA'S PETITION FOR REHEARING.

WHEREFORE, PETITIONER VICTORIA prays that this Honorable Nevada Supreme Court:

1. issue a Court Order for correction and/or clarification of PETITIONER VICTORIA'S PETITION TO SEEK PERMISSION TO CORRECT A CLERICAL MISTAKE AND/OR CLARIFICATION PURSUANT TO NRCP 60(a).

NOTICE OF HEARING

TO: DISTRICT COURT JUDGE SANDRA L. POMRENZE

TO: CHARLES F. GIAMPA – PLAINTIFF, REAL PARTY IN INTEREST

PLEASE TAKE NOTICE that the undersigned will bring the above entitled petition, on for hearing before the Nevada Supreme Court, Carson City, Nevada on the ____day of _____, 2009, in Department No. __, at ___ _.m., or as soon thereafter as counsel can be heard.

DATED this 16th day of MARCH, 2009.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027

FACTUAL AND LEGAL ARGUMENT
(Points and Authorities)

1. PETITIONER VICTORIA (hereinafter VICTORIA) seeks permission for leave to obtain a Court Order for correction and/or clarification due to such clerical mistake affecting issues to be argued and decided by the Nevada Supreme Court. VICTORIA contends that the language used in the March 10, 2009 Petition could unreasonably be subject to interpretation and requiring clarification arising from a clerical mistake. In this regard, VICTORIA contends that NRCP 60(a) is generally used to cure a clerical mistake and/or clarification as follows:

> (a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

2. VICTORIA contends that the following sentence on Pg. 33/L17-25 needs correction to accurately reflect the record from:

> VICTORIA argues that the Court issued an arbitrary and capricious order that a change of primary custody to "joint physical custody" was in the child's best interest. VICTORIA contends that the Ellis case is suspect in that no mention is made of a timeline and no mention is made whether the parties were afforded an opportunity to mediate the issue of the child's education first before Carucci filed for a motion for a change of custody.
>
> VICTORIA further argues that if the parties were denied mediation, it was unconstitutional to deprive the parties' notice and an opportunity to be heard regarding the child's education in a mediation setting first based on Ellis' status as primary custodian.
>
> VICTORIA argues that the Court's custom and policy of denying the parties an opportunity to mediate child issues of education results in violations of constitutionally protected rights of the child.

to:

> VICTORIA argues that in her case, the Court issued an arbitrary and capricious order that a change of primary custody to "joint physical custody" was in the child's best interest.

VICTORIA contends that the **Rivero** [1] case is suspect in that no mention is made of a timeline. No mention is made whether the parties were afforded an opportunity to mediate constitutional issues first such as the children's education and welfare and to define for themselves what constitutes "joint custody" and to allow the parents their fundamental right to enter into a parental stipulation on child support which may be used as child support guidelines before Rivero filed for a motion for a change of custody. VICTORIA contends that the Nevada Supreme Court's failure to deliberately define "joint custody" makes all such orders in VICTORIA'S case void and any other orders in other cases also void.

Likewise, in the case of **Ellis**[2], no mention is made whether the parties were afforded an opportunity to mediate constitutional issues first such as the children's education and welfare and to define for themselves what constitutes "joint custody" and to allow the parents their fundamental right to enter into a parental stipulation on child support which may be used as child support guidelines before Carucci filed for a motion for a change of custody. VICTORIA contends that the Nevada Supreme Court's failure to deliberately define "joint custody" makes all such orders in VICTORIA'S case void and any other orders in other cases also void.

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[1] Rivero v. Rivero, 195 P.3d 328 (2008)
[2] Ellis v. Carucci, 161 P.3d 239 (2007)

CONCLUSION

Based upon the above and foregoing factual and legal argument, VICTORIA has demonstrated that she is entitled to have this Court make an order for correction and/or clarification to accurately reflect the record due to a clerical mistake.

AFFIDAVIT

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

VICTORIA GIAMPA, first being duly sworn, deposes and says:

1. I am the PETITIONER in this matter. I am making this Affidavit in Support of PETITIONER VICTORIA GIAMPA'S PETITION TO SEEK PERMISSION TO CORRECT A CLERICAL MISTAKE AND/OR CLARIFICATION PURSUANT TO NRCP 60(a) TO PETITIONER VICTORIA'S PETITION FOR REHEARING;

2. That I have personal knowledge of all facts stated herein, except those facts stated to be based on information and belief. If called to do so, I could and would competently testify to the truth of the facts stated herein, except those facts stated to be based upon information and belief;

3. That on March 10, 2009, VICTORIA filed PETITION FOR REHEARING with the Nevada Supreme Court;

4. That VICTORIA believes that the **Rivero**[3] case is suspect in that no mention is made of a timeline. No mention is made whether the parties were afforded an opportunity to mediate constitutional issues first such as the children's education and welfare and to define for themselves what constitutes "joint custody" and to allow the parents their fundamental right to enter into a parental stipulation on child support which may be used as child support guidelines before Rivero filed for a motion for a change of custody. VICTORIA further believes that the Nevada Supreme Court's failure to deliberately define "joint custody" makes all such orders in VICTORIA'S case void and any other orders in other cases also void;

5. VICTORIA believes that in the case of **Ellis**,[4] no mention is made whether the parties were afforded an opportunity to mediate constitutional issues first such as the children's education and welfare and to define for themselves what constitutes "joint custody" and to allow the parents their fundamental right to enter into a parental stipulation on child support which may be used as child support guidelines before Carucci filed for a motion for a change of custody. VICTORIA believes that the Nevada Supreme Court's failure to deliberately define "joint custody" makes all such orders in VICTORIA'S case void and any other orders in other cases also void.

6. VICTORIA believes that she is entitled to obtain a Court Order for correction and/or clarification to accurately reflect the record due to VICTORIA using a poor choice of

---

[3] Rivero vs. Rivero, 195 P.3d 328 (2008)
[4] Ellis v. Carucci, 161 P.3d 239 (2007)

words when rushing to proofread her October 21, 2008 Petition to Amend.

FURTHER AFFIANT SAYETH NAUGHT.

VICTORIA GIAMPA

SUBSCRIBED AND SWORN to before me
this 16th day of MARCH 2009.

Celina Mason
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Victoria Giampa, hereby certify that on the 16th day of March 2009, I personally placed in the U.S. Mail, postage prepaid, PETITION TO SEEK PERMISSION TO CORRECT A CLERICAL MISTAKE AND/OR CLARIFICATION PURSUANT TO NRCP 60(a) TO PETITIONER VICTORIA GIAMPA'S PETITION FOR REHEARING to the following:

Charles Giampa
2963 E. Viking Road
Las Vegas, Nevada 89121

Judge Sandra L. Pomrenze
602 E. Pecos Road
Las Vegas, Nevada 89101

VICTORIA GIAMPA
Petitioner In Pro Se

Victoria Giampa
1848 Wellington Court
Henderson, NV 89014
(702) 434-9027

March 16, 2009

Henderson Police Department
243 S. Water Street
Henderson, NV 89014

Re: Marco Giampa
#08CR2952

On February 9, 2009 my son Marco called my home phone and cell phone several times and left threatening voicemail and telephone messages. The rage exhibited in my boy's voice in his repeated threats and taking out his anger on me is frightening. I called his father Charles Giampa and told him that if he does not take Marco for therapy to deal with his anger, that I will file a TPO. His father refuses to seek psychiatrist help for our son. Marco's driver's license was revoked for 90 days for driving under the influence. Charles pays $2,000 for an attorney to reduce Marco's sentence for driving under the influence rather than pay for needed-psychological help. Marco is also smoking marijuana because of his weight gain.

On March 16, 2009 I filed a TPO against my son placing authorities on notice that Marco needs psychiatric immediately to deal with his rage. I am fearful that my son Marco is capable of carrying through with his threats of

violence. I also fear for my son's safety and for the safety of others.

In April 6, 2009, Marco is to appear in Department [sic] for a status check on whether or not Judge Mark Stevens will reinstate Marco's driver's license. If Marco does not get help immediately, sitting behind the wheel of his car, he is capable of harming himself or harming others. If this Court has the authority to immediately intervene and to order anger management, please intervene immediately to keep my son from harming himself or others. Attached is the TPO I filed with Clark County, Nevada, Family Court on March 16, 2009.

I am my son's mom,

Victoria Giampa

cc: Attorney General's Office
Dan Gillian

Marco's father pays for his apartment at the Las Vegas Country Club Towers, pays for the payment on his car, gives him money for food and gas, pays for his health insurance and car insurance. Marco does not have any responsibilities other than drive errands for his father. He does not attend school, stays home all day watching TV or listening to music, does not have a job, hangs out with his friends, and his sister drives him all over town. He has gotten into car accidents which I feel are really attempts at suicide. He acts out in all kinds of ways. He shows tremendous rage or turns completely inward if he does not get his way. However, Marco's pain and motivation is out there every day as his father has left him alone and unsupervised and not given him any family foundation nor fatherly guidance. I feel that Marco is self-abusing himself – everything as simple as dropping out of school, not working, and getting depressed. Since Marco's father, Charles Giampa, has legal control over our son, Charles needs to seek immediate psychiatric help for our son Marco to deal with his hurt, out-of-control anger, issues of self-esteem and depression. I am extremely fearful that Marco will hurt himself or hurt someone else carelessly. I am also fearful that Marco is capable of carrying through with his threats of physical violence against me if not soon – some time in the future. By filing a TPO I have placed the authorities on *notice* of my son's potential for harming himself and for harming others once he sits behind the wheel of his car if he does not get psychiatric help immediately.

Victoria Giampa

DISTRICT COURT,
FAMILY DIVISION
CLARK COUNTY, NEVADA

Victoria Giampa,
Applicant,
vs. Case No. T
Marco Giampa,
Adverse Party

APPLICATION FOR A TEMPORARY AND/OR EXTENDED ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE

Applicant states the following facts under penalty of perjury:

1. Applicant's Date of Birth: 7/28/48
   Adverse Party's Date of Birth: 8/15/89
   Relationship: I am the mother.
   A. Length of relationship: 19 years
   B. Have you ever lived together? Yes. If so, how long? 15 years.
   C. Are you living together now? No.
   D. Date of Separation: January 2005
   E. We have child(ren) TOGETHER: No.
2. My address is CONFIDENTIAL
   I own this residence.

How long have you been living in this residence? July 2003.

3. Adverse Party's Address is:
   737 Oakmont Drive, Las Vegas Country Club
   City: Las Vegas County: Clark State: NV
   Zip Code: 89101

How long has the Adverse Party been living in this residence?

Approx. 1/ ½ yrs.

4. to 6.: Blank with regard to employment.

7. Please check the appropriate box, IF YOU or the ADVERSE PARTY have ever filed a case in any court for a Divorce, Child Support.

8. (a) Has CHILD PROTECTIVE SERVICES (CPS) ever been contacted regarding any member o the household in the past year? No.

(b) Is CPS currently involved with this family? No.

9. Does the Adverse Party possess a firearm, or does the Adverse Party have a firearm under his custody or control? No.

Has the Adverse Party ever threatened, harassed, or injured you, the minor child(ren) or anyone else with a firearm or any other weapon? No.

10. (a) I have been or reasonably believe I will become a victim of domestic violence committed by the Adverse Party.

In the following space, state the facts which support your Application. Be as specific as you can, starting with the most recent incident. Include the approximate dates and locations, and whether law enforcement or medical personnel have been involved.

THIS APPLICATION IS A PUBLIC RECORD

(see attached typewritten description)

11. Have YOU ever been arrested or charged with domestic violence, or any other crime committed against your spouse, partner, or child(ren)? No.

12. To your knowledge, has the ADVERSE PARTY ever been arrested or charged with domestic violence, or any other crime committed against his/her spouse, partner, or child(ren)? No.

13. An emergency exists, and I need a TEMPORARY ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE issued immediately, without notice to the Adverse Party, to avoid irreparable injury or harm. I request that it include the following relief, and any other relief the Court deems necessary in any emergency situation. (Please check all the choice(s) that may apply to YOU):

(A) Prohibit the Adverse Party, either directly or through an agent, from threatening, physically injuring, or harassing me and/or the minor child(ren).

(B) Prohibit the Adverse Party from any contact with me whatsoever.

(C) Exclude the Adverse Party from my residence and order the Adverse Party to stay at least 10 yards away from my residence.

(D) to (J): Blank with regard to children and employment.

...

(K) That since Marco's father Charles Giampa has legal control over our son, that he hire the services of a psychiatrist immediately to help Marco cop with issues of out-of-control anger, depression and low self-esteem.

14, (A) to (N): Blank. Regarding Extended Order for Protection.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT I HAVE READ THE STATEMENTS CONTAINED IN THIS APPLICATION, KNOW THE CONTENTS THEREFORE, AND BELIEVE THEM TO BE TRUE AND CORRECT.

Date: 3-13-09

VICTORIA GIAMPA
Signature of Application

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: February 20, 2009
Tracie K. Lindeman
Clerk of Supreme Court
No. 51422

ORDER AFFIRMING APPEAL IN PART AND DISMISSING APPEAL IN PART

This is a proper person appeal from a district court order awarding $1,500 in attorney fees to the respondent. Eighth Judicial District Court Judge, Family Court Division, Clark County; Sandra Pomrenze, Judge.

Jurisdictional issues regarding the order challenged on appeal

This court has jurisdiction to consider an appeal only where the appeal is authorized by statute or court rule. Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). The order designated in appellant's notice of appeal contains numerous rulings by the district court. The challenged order (1) vacated a hearing on various motions filed by appellant, (2) found appellant to be a vexatious litigant, (3) denied appellant's stay motion, (4) denied appellant's "countermotion for an order to show cause why [respondent] should not be held in contempt," and (5) awarded $1,500 in attorney fees to respondent. However,

only the portion of the challenged order awarding attorney fees is substantively appealable. No statute or court rule authorizes an appeal from an order vacating a hearing, finding an individual to be a vexatious litigant, or denying a motion for an order to show cause. See NRAP 3A(b) (listing orders and judgments from which an appeal may be taken). Likewise, no statute or court rule authorizes an appeal from a district court order denying a stay. Brunzell Constr. v. Harrah's Club, 81 Nev. 414, 419, 404 P.2d 902, 905 (1965) (stating that "[a]n order granting or denying a stay f proceedings is not among [the list of statutorily appealable determinations]"). Accordingly, to the extent appellant challenge these unappealable portions of the district court's order, her appeal is dismissed.

Award of attorney fees to respondent.
With regard to appellant's challenge to the portion of the order awarding $1,500 in attorney fees to respondent, appellant has failed to make an substantive arguments with respect to this portion of the appeal. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider issues when an appellant fails to present any arguments or authority regarding those issues).
Accordingly, we affirm the district court's award of attorney fees.

Additional district court rulings identified in appellant's civil proper person appeal statement.
Appellant, in her civil proper person appeal statement, has listed numerous other alleged district court rulings on various motions, which she also apparently seeks to challenge on appeal. Appellant, however, makes no salient

argument regarding these motions and does not identify whether written orders addressing these motions were ever entered. Moreover, any orders ruling on the majority of these motions would be considered non-appealable orders. See Taylor Constr. Co., 100 Nev. 207, 678 P.2d 1152.

Accordingly, to the extent any appealable orders resolving these motions have been entered, we affirm the district court's decisions based on appellant's failure to make any salient arguments regarding these decisions. See Edwards, 122 Nev. At 330 n.38, 130 P.3d at 1288 n.38. To the extent any such determinations are not appealable, we dismiss appellant's appeal as to those determinations. Furthermore, to the extent appellant challenges any orders regarding child custody, we hold that any such challenge is moot as the children in question are now adults. See University of Nevada v. Tarkanian, 95 Nev. 389, 394, 594 P.2d 1159, 1162 (1979) (recognizing that this court's duty is to enter a judgment on actual controversies so that the judgment is effective, and that this court should not give opinions upon moot questions).

It is so ORDERED. [1]

_____,J.
Cherry

_____,J.
Saitta

_____,J.
Gibbons

[1] In light of this order, we deny as moot all pending motions on appeal.

cc: Eighth Judicial District Court Dept. E, District Judge,
Family Court Division,
Victoria Margaret Giampa,
Smith Larsen & Wixom,
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

District Court Case
No: 98-D224029

vs.

Nevada Supreme
Court No.:

THE EIGHTH JUDICIAL DISTRICT COURT
of the State of Nevada, in and for the County
of Clark, and DISTRICT COURT
JUDGE SANDRA L. POMRENZE,

Respondent.

Oral Argument
Requested: YES

and

CHARLES F. GIAMPA,

Real Party In Interest.

PETITIONER VICTORIA GIAMPA'S SUPPLEMENT #1 OF LIST OF EXHIBITS IN SUPPORT OF PETITIONER VICTORIA GIAMPA'S PERMISSION FOR LEAVE TO AMEND PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION; OR PERMISSION FOR REHEARING OF PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION

COMES NOW, PETITIONER VICTORIA GIAMPA (hereinafter VICTORIA), appearing in proper person, who hereby brings her LIST OF EXHIBITS pursuant to EDCR 2.20.

WHEREFORE, VICTORIA is entitled to have the Nevada Supreme Court consider these Exhibits in support of her Petition.

DATED this 7th day of NOVEMBER, 2008.

_____

Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027

VOLUME I

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5	10/2/08	Order Denying Petition for Writ of Mandamus or in the Alternative..	4
6	3/7/08	Judge Pomrenze's Findings of Fact, Conclusions of Law and Order ...	5
7	9/22/08	Certificate of Mailing of Writ to Judge Pomrenze.....	5
8	6/10/05	Order Establishing Pilot Program in Civil Appeals.....	6
9	7/20/08	District Court Judge Hardcastle Order for not finding Victoria vexatious..	7
10	7/28/08	Judge Pomrenze denied Victoria permission to file: Defendant Victoria Giampa's Ex-Parte Motion to Seek Permission To File Defendant's Application for an Independent Action To Set Aside All Orders Which Modified the Initial and Non-Modifiable 9/23/98 Final Settlement Agreement Pursuant to NRCP 59 AND NRCP 60(b) [Pursuant to the January 20, 2008 Nevada Supreme Court Decision] Due to Plaintiff's History of Facts and Attendant Circumstances Evidencing Fraud Upon	

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VOLUME II

Judge Pomrenze refuses to allow Victoria to file Defendant's Exhibit in Support of Defendant's Application for an Independent Action To Set Aside All Orders Which Modified the Initial and Non-Modifiable 9/23/98 Final Settlement Agreement....and; Outline of Clerk of the Court's failure and Master Calendar's failure to follow the Local Rules in permitting this Court and ATTORNEY DUCKWORTH to gain an advantage when controlling the pace of scheduling dates of motions and hearings resulting in prejudicial harm to the Defendant and the minor children, and; Outline of Fraud Upon the Court committed by ATTORNEY DUCKWORTH and CHARLES with the help of the Court:

28	7/21/08	**Defendant's Exhibit In Support of Defendant's Application For An Independent Action To Set Aside All Orders Which Modified the Initial and Non-Modifiable 9/23/98 Final Settlement Agreement Pursuant To NRCP 59 and NRCP 60(b) Due To Plaintiff's History of Facts and Attendant Circumstances Evidencing Fraud Upon the Court; and Defendant's Application for Order to Show Cause and For Willful and Deliberate Contempt and For Imposition of Sanctions; and Defendant's Motion to Stay All**

Proceedings Pending a Nevada Revised Statutes re: Best Interests of The Minor Children;

ATTORNEY DUCKWORTH'S admissions of fraud upon the court in strict violation of EDCR 5.12(a) which provides that a party may not have a "therapist, counselor, psychologist or similar professional" examine a child for the purpose of obtaining an expert opinion for trial or hearing except upon court order" other than the court-appointed psychologist Dr. Louis Mortillaro:

29 3/1/06 PLAINTIFF'S ANSWERS TO DEFENDANT'S SECOND REQUEST FOR SET OF INTERROGATORIES;

ATTORNEY DUCKWORTH'S admissions of fraud upon the court in strict violation of EDCR 5.12(a) which provides that a party may not have a "therapist, counselor, psychologist or similar professional" examine a child for the purpose of obtaining an expert opinion for trial or hearing except upon court order" other than the court-appointed psychologist Dr. Louis Mortillaro:

30 7/24/06 Letter from ATTORNEY DUCKWORTH to VICTORIA.

LIST OF VICTORIA'S PENDING 60(b) MOTIONS

JUDGE POMRENZE deliberately fails to abide by the Nevada Supreme Court's January 25, 2008 Order which prevents VICTORIA from filing her motion to seek a final appealable order pursuant to NRCP 60(b) and to properly proceed as an aggrieved person:

31	**2/14/05**	**Defendant's Motion for Clarification and Motion for Reconsideration of Parent-Child Issues and Court Order(s) Pursuant to NRCP 60(b); Motion For Court Ordered Mediation;**
32	**11/1/05**	**Defendant/Counterclaimant's Motion To Set Aside Temporary Order For Change of Physical Custody Pursuant to NRCP 60(b);**
33	**9/26/06**	**Defendant's Rule 60(b) Motion to Reinstate and/or Enforce Support Obligations and Imposition of Sanctions Against Plaintiff;**
34	**9/26/06**	**Defendant's Motion for Reassignment and Random Appointment of Visiting Judge to Conduct an Evidentiary Hearing [pursuant to Rule NRCP 60(b) Pg. 11/L3-18];**

35	**9/26/06**	**Defendant's Motion for Clarification and For Reconsideration of September 5, 2006 Court Order(s) Pursuant to NRCP 60(b);**
36	**12/18/06**	**Defendant's Motion for Clarification and Reconsideration of Defendant's Objection to the District Court's Adoption of the October 20, 2006 Discovery Commissioner's Findings and Recommendations Pursuant to NRCP 52(a) and NRCP 60(b);**
37	**7/9/07**	**Defendant's Motion for Relief of Judgment Due to a History of Facts and Attendant Circumstances Evidencing Plaintiff's Fraud Upon the Court Pursuant to NRCP 60(b)**

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

District Court Case
No: **98-D224029**

vs.

Nevada Supreme Court
No.:

THE EIGHTH JUDICIAL DISTRICT
COURT of the State of Nevada, in and
for the County of Clark, and
DISTRICT COURT JUDGE
SANDRA L. POMRENZE,

Respondent.

Oral Argument
Requested: YES

and

CHARLES F. GIAMPA,

Real Party In Interest.

COMES NOW, PETITIONER VICTORIA GIAMPA, (hereinafter VICTORIA), who hereby seeks from the Nevada Supreme Court, PERMISSION TO FILE AN EXTENSION OF TIME for the purpose of filing PERMISSION FOR LEAVE TO AMEND PETITION FOR WRIT OF

MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION; OR PERMISSION FOR REHEARING OF PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION in compliance with the Nevada Rules of Appellate Procedure, NRAP 26, Computation and Extension of Time.

WHEREFORE, VICTORIA GIAMPA makes this Petition based upon equitable grounds and is based upon good cause in order to have the Nevada Supreme Court consider her argument(s).

Victoria Giampa
1848 Wellington Court
Henderson, NV 89014
(702) 434-9027
In Proper Person

NOTICE OF HEARING

TO: DISTRICT COURT JUDGE SANDRA L. POMRENZE

TO: CHARLES F. GIAMPA – PLAINTIFF, REAL PARTY IN INTEREST

TO: BRYCE C. DUCKWORTH, ESQ. – ATTORNEY FOR PLAINTIFF, REAL PARTY IN INTEREST

PLEASE TAKE NOTICE that the undersigned will bring the PERMISSION TO FILE AN EXTENSION OF

TIME on hearing before the Nevada Supreme Court, Carson City, Nevada on the ____day of _____, 2008, in Department No. __, at ___ _.m., or as soon thereafter as counsel can be heard.

DATED this 22nd day of OCTOBER, 2008.

By: Victoria Giampa

/ / /

SUMMARY BACKGROUND

On August 24, 2007, JUDGE SANDRA L. POMRENZE issued an Order as follows:

> *Defendant's Motion for Stay is Denied;*
> *Court finds Defendant is a Vexatious Litigator, given the number of motions* ***filed over the years*** *and the number which have been found to be non-meritorious, therefore, Defendant must get the permission of the Court to file any future motions;*
>
> *Plaintiff is awarded Attorney's Fees in the amount of $1,500.00;*
>
> *Defendant's request for sanctions against Plaintiff is denied as being non-meritorious.*
>
> *Plaintiff was not barred from filing a Countermotion and the Countermotion was meritorious in part.*

Judge Sanchez, on *February 11, 2004*, made the following opposite statements about VICTORIA'S ability to file motions which prove Judge Pomrenze of bias and prejudice when she deems VICTORIA a vexatious litigant as follows:

> *JUDGE SANCHEZ: ...and defendant may be very well meaning, and she certainly is a brilliant litigant from -- in comparison to the normal litigants who don't have counsel because she – she cites the case law. She's -- she's you know, she's someone you'd want to hire if you had that kind of case where there were so many complex issues to litigate because she's extremely thorough.*

> *JUDGE SANCHEZ: There's numerous citations to transcripts, a lot of research. I mean, I can't conceive -- it must take months to research that kind of a brief, to file a ninety-nine page brief with twenty-two issues for relief. And she cites transcripts and case law and -- I mean, it's beyond the pale. We don't even have lawyers who've been practicing for thirty years filing those kinds of pleadings. So it's -- The benefit is that we know we have an informed litigant here who is not the normal uninformed pro per litigant who is at a loss as to what the law provides and what's required in terms of burden of proof.*

Chief District Court Judge Kathy A. Hardcastle, on *July 20, 2007*, issues the unappealed and unchallenged Court Order as follows:

> *JUDGE HARDCASTLE: Plaintiff's Countermotion for Finding Defendant to be a Vexatious Litigant shall be denied without prejudice.*

JUDGE HARDCASTLE: Plaintiff's Countermotion for the Imposition of Sanctions and For Reimbursement of Attorney's Fees shall also be denied.

On October 18, 2007, VICTORIA FILED PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT and alleges that at that time she set forth sufficient facts by a preponderance of evidence that demonstrate she has established a prima facie case for the issuance of such Writ. At that time VICTORIA sought, but has been unable, for one reason or another, to obtain from JUDGE POMRENZE a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the *August 28, 2007* hearing. VICTORIA has cause for concern as to which motions will be heard and to what extent at the hearing scheduled for *August 28, 2007,* and the Minute Order does not in any way identify or itemize the unheard and unresolved motions pending before JUDGE POMRENZE.

On January 25, 2008, the Nevada Supreme Court issued its ORDER DISMISSING APPEAL which states that "Once the district court enters a written order resolving the NRCP 60(b) motion, appellant, if aggrieved, may file an appeal from that order. Accordingly, as we lack jurisdiction over this appeal, we Order this appeal Dismissed."

On or about July 28, 2008, VICTORIA submits to JUDGE POMRENZE for permission to file DEFENDANT VICTORIA GIAMPA'S MOTION TO SEEK PERMISSION TO FILE DEFENDANT'S APPLICATION FOR AN INDEPENDENT ACTION TO SET ASIDE ALL ORDERS

WHICH MODIFIED THE INITIAL AND NON-MODIFIABLE 9/23/98 FINAL SETTLEMENT AGREEMENT PURSUANT TO NRCP 59 AND NRCP 60(b) [PURSUANT TO THE JANUARY 20, 2008 NEVADA SUPREME COURT DECISION] DUE TO PLAINTIFF'S HISTORY OF FACTS AND ATTENDANT CIRCUMSTANCES EVIDENCING FRAUD UPON THE COURT; and DEFENDANT'S APPLICATION FOR ORDER TO SHOW CAUSE AND FOR WILLFUL AND DELIBERATE CONTEMPT AND FOR IMPOSITION OF SANCTIONS; and DEFENDANT'S MOTION TO STAY ALL PROCEEDINGS PENDING A DETERMINATION OF A CONSTITUTIONAL CHALLENGE TO NEVADA REVISED STATUTES RE: BEST INTERESTS OF THE MINOR CHILDREN. VICTORIA spoke to JUDGE POMRENZE'S law clerk and she informed VICTORIA that JUDGE POMRENZE denies permission to file the motion and told VICTORIA to again submit the same motion *ex-parte.*

On or about August 18, 2008, VICTORIA attempts for a 2nd time and submits for JUDGE POMRENZE'S permission to now file an Ex-Parte MOTION TO SEEK PERMISSION TO FILE DEFENDANT'S APPLICATION FOR AN INDEPENDENT ACTION TO SET ASIDE ALL ORDERS WHICH MODIFIED THE INITIAL AND NON-MODIFIABLE 9/23/98 FINAL SETTLEMENT AGREEMENT PURSUANT TO NRCP 59 AND NRCP 60(b) [PURSUANT TO THE JANUARY 20, 2008 NEVADA SUPREME COURT DECISION] DUE TO PLAINTIFF'S HISTORY OF FACTS AND ATTENDANT CIRCUMSTANCES EVIDENCING FRAUD UPON THE COURT; and DEFENDANT'S APPLICATION FOR ORDER

TO SHOW CAUSE AND FOR WILLFUL AND DELIBERATE CONTEMPT AND FOR IMPOSITION OF SANCTIONS; and DEFENDANT'S MOTION TO STAY ALL PROCEEDINGS PENDING A DETERMINATION OF A CONSTITUTIONAL CHALLENGE TO NEVADA REVISED STATUTES RE: BEST INTERESTS OF THE MINOR CHILDREN. Once again, for a 2nd time, JUDGE POMRENZE denies permission for VICTORIA to file her motion.

On September 12, 2008, VICTORIA again files for a second time IN PROPER PERSON PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE PETITION FOR WRIT OF PROHIBITION and outlines a timeline of the motions heard before JUDGE POMRENZE wherein she steadfastly refuses to make any short-term orders concerning the minor children under the Best Interest of the Children standard and refuses to hear pending motions regarding support issues.

On October 2, 2008, the Nevada Supreme Court issued ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION which states that "A petition must also be supported by an affidavit of the party beneficially interested and must be served upon the respondent judge and all parties to the district court action.

VICTORIA contends that although she did not 'attach' any exhibits to her *September 12, 2008* ...PETITION FOR WRIT OF MANDAMUS.... she fully satisfies the requirements of NRCP 21 by "making a statement of the facts necessary to an understanding of the issues presented by the application, a statement of the issues presented and

of the relief sought, a statement of the reasons why the Writ should issue, and copies of any order or *opinion or parts of the record* which may be essential to an understanding of the matters set forth in the petition" when she *quoted and cited the pertinent opinions and* the *pertinent parts of the record* from JUDGE POMRENZE'S *March 7, 2008* FINDINGS OF FACT AND CONCLUSIONS OF LAW ORDER and *quoted and cited the pertinent opinions and the pertinent parts of the record* from the Nevada Supreme Court's *January 25, 2008* ORDER DISMISSING APPEAL in her Writ.

VICTORIA further contends that on *September 22, 2008*, she further satisfied the requirements of NRCP 21 by filing with the Nevada Supreme Court a CERTIFICATE OF MAILING OF PETITION FOR WRIT OF MANDAMUS and personally placed it in the mail addressed to JUDGE POMRENZE.

On October 21, 2008 VICTORIA submits to the Nevada Supreme Court for filing PERMISSION FOR LEAVE TO AMEND PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION; OR PERMISSION FOR REHEARING OF PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION and attached exhibits.

FACTUAL AND LEGAL ARGUMENT
(Points and Authorities)

VICTORIA diligently moves promptly and requests this Court for PERMISSION TO FILE AN EXTENTION OF TIME to file PETITIONER VICTORIA GIAMPA'S PERMISSION FOR LEAVE TO AMEND PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION; OR PERMISSION FOR REHEARING OF PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION permission to and relies on NRAP 26(B), which states in relevant part:

> (b) Enlargement of Time. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal.

VICTORIA needs this specific time frame requested because she is still having to vigilantly and vehemently defend against JUDGE POMRENZE'S recent actions where she refuses to allow VICTORIA from filing moving papers in Family Court that have proven to compound litigation solely to stretch VICTORIA'S financial resources and daily available time to properly attend to these Petitions.

VICTORIA has reason for concern because JUDGE POMRENZE deliberately fails to abide by the Nevada Supreme Court's *January 25, 2008* Order which declares VICTORIA a vexatious litigant and prevents her from filing

her motion to seek a final appealable order pursuant to NRCP 60(b) and to properly proceed as an aggrieved person.

JUDGE POMRENZE deliberately and purposefully refuses to issue Orders and prejudices VICTORIA'S right to allow her to file her motion and ultimately file an appeal as an aggrieved person, Barry v. Lindner, 119 Nev. 661, 669, 81 P.3d 537, 542-43 (2003). In allowing JUDGE POMRENZE'S *March 7, 2008* Order to stand, it prejudices VICTORIA'S rights, and that the only remedy that is fair and equitable relief is to permit a Writ. Nevada Courts have recognized that they have inherent power to seek and to do equity. *Ham v. District Court*, 93 Nev. 409, 416, 566 P.2cd 420, 424 (1977). JUDGE POMRENZE divests herself of authority to consider the merits of any of VICTORIA'S pending motions which ultimately precludes her from appealing an order and thus, a writ petition is the only available means to challenge the court's decision. *Floyd v. District Court*, 36 Nev. 349, 135 P. 922 (1913). JUDGE POMRENZE'S failure to allow VICTORIA to file her motion tends to frustrate VICTORIA'S ability to seek a final appealable order thereby violating VICTORIA'S right to due process of law.

VICTORIA seeks an extension of time to file her Petition because she contends that the court has previously held that "a petitioner is damaged or prejudiced if his claim will be moot on appeal." SG Cowen Sec. Corp. v. U.S. Dist. Court, 189 F.3d 909, 913 (9th Cir. 1999). VICTORIA filed a Motion to Stay and has demonstrated that she has no alternative means of relief and will suffer harm that is not correctable on appeal.

VICTORIA has been proceeding in pro se and as a pro se litigant, and she is entitled to a "less stringent" interpretation of her pleadings than those applied to "formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972); Molina v. City of Lancaster, 159 F. Supp. 2d 813, 818 (E.D. Pa. 2001).

Finally, it is well recognized in Nevada Law that there is no appeal from an oral order or even a clerk's minute order or an un-filed written order. See Rust v. Clark County School Dist. 103 Nev. 686, 747 P.2d1380 (1987). It is clear that JUDGE POMRENZE'S oral order denying VICTORIA permission to file her motion is not appealable. Thus the only remedy that Victoria has is Mandamus or Prohibition as any appeal of this issue after any final order or judgment would come too late. JUDGE POMRENZE knowingly and deliberately places VICTORIA in a predicament reminiscent of author Joseph Heller's "Catch 22" and deliberately prevents VICTORIA from seeking a final appeal order as outlined in the Nevada Supreme Court's January 25, 2008 Order.

CONCLUSION

Based on the foregoing Factual and Legal Argument and good cause showing, VICTORIA believes that she has met the standard of burden of proof and persuasion so that this Court should grant her permission for an Extension of Time to File her Petition.

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, **VICTORIA GIAMPA**, after being first duly sworn, upon her oath deposes and says that:

1. I am the PETITIONER in the above-captioned PERMISSION TO FILE AN EXTENSION OF TIME for the purpose of filing PERMISSION FOR LEAVE TO AMEND PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION; OR PERMISSION FOR REHEARING OF PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION;

2. That all statements made are based upon my personal knowledge, unless stated upon information and belief, and as to these I am informed and believe them to be true;

3. VICTORIA believes that she needs this specific time frame because she is still having to defend litigation in Family Court that has proven to stretch the financial resources and available time to VICTORIA to attend to these Petitions;

4. VICTORIA believes that she has reason for concern because Judge Pomrenze's August 24, 2007 order declaring VICTORIA a vexatious litigator improperly relies upon the filings before another judge and her Findings of Facts do not meet the test that the 9th Circuit Court's recognizes to declare VICTORIA a vexatious litigator;

5. VICTORIA believes that JUDGE POMRENZE deliberately and purposefully refuses to issue Orders and prejudices VICTORIA'S right to allow her to file her motion and ultimately file an appeal as an aggrieved person;

7. VICTORIA believes that she has been in the past and will continue to be in the future in full compliance with the Nevada Rules of Appellate Procedure and will continue to do so should this Court grant her instant request for an extension of time to file her Petition pursuant to Nevada Supreme Court Rules;

8. VICTORIA also believes that her request for an extension of time to file a Petition is made in good faith and for good cause.

FURTHER AFFIANT SAYETH NAUGHT.

_____
VICTORIA GIAMPA

DATED THIS 22nd day of OCTOBER, 2008.

SUBSCRIBED AND SWORN
to before me this 22nd day of
OCTOBER, 2008.

Amber Lynn Bell
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on the _____ **day of OCTOBER, 2008,** I placed a true and correct copy of the above document in the U.S. mail, postage prepaid, to the following:

BRYCE C. DUCKWORTH, ESQ.
Smith, Larsen & Wixom
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorney for Charles Giampa

Judge Sandra L. Pomrenze
Eighth Judicial District Court
601 North Pecos Road
Las Vegas, Nevada 89101-2408

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND, THE HONORABLE SANDRA L. POMRENZE, DISTRICT JUDGE, FAMILY COURT DIVISION,
Respondents,
and
CHARLES F. GIAMPA,
Real Party in Interest.

Filed October 02, 2008
Tracie K. Lindeman
Clerk of Supreme Court

No. 42424

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This original proper person petition for a writ of mandamus or prohibition challenges a district court order that denied several motions and declared petitioner a vexatious litigant.

Under NRAP 21(a), a petition for extraordinary relief must contain, among other things, a statement of "the facts necessary to an understanding of the issues presented by the application," the issues presented and the relief sought, and the reasons why the writ should issue.[1] Thus, because

[1] See Pan v. Dist. Ct., 120 Nev. 222, 228-29, 88 P.3d 840, 844 (2004.

petitioner bears the burden of demonstrating that extraordinary relief is warranted,[2] she must provide this court with any and all materials that are "essential to an understanding of the matters set forth in the petition."[3] A petition must also be supported by an affidavit of the party beneficially interested[4] and must be served upon the respondent judge and all parties to the district court action.[5]

Here, petitioner failed to include copies of any documents from the district court action, and she did not include an affidavit in support of the petition. She also failed to serve the petition upon the respondent district court judge. Accordingly, we

ORDER the petition DENIED.[6]

_____, J.
Cherry,

_____, J.
Maupin,

_____, J.
Saitta

cc: Hon. Sandra Pomrenze, District Judge,
Family Court Division
Victoria Margaret Giampa
Smith Larsen & Wixom
Eighth District Court Clerk

---

[2] Id. At 228-29, 88 P.3d at 844.
[3] NRAP 21(a).
[4] NRS 34.170; NRS 34.330
[5] NRAP 21(a).
[6] See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (stating that whether to grant extraordinary relief is discretionary with this court).

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

District Court Case
No. 98-D224029

vs.

Nevada Supreme:
Court No.:

THE EIGHTH JUDICIAL DISTRICT COURT
of the State of Nevada, in and for the County
of Clark, and THE HONORABLE DISTRICT
COURT JUDGE, Sandra L. Pomrenze,

Respondent.

Oral Argument
Requested: **YES**

and

CHARLES F. GIAMPA,

Real Party In Interest.

PETITIONER VICTORIA GIAMPA'S
MOTION FOR LEAVE OF COURT
TO FILE IN PROPER PERSON PETITION FOR WRIT
OF MANDAMUS OR IN THE ALTERNATIVE
PETITION FOR WRIT OF PROHIBITION

COMES NOW, VICTORIA GIAMPA (hereinafter VICTORIA), In Proper Person, a resident of Clark County, State of Nevada, moves that the Nevada Supreme Court grant PETITIONER VICTORIA GIAMPA leave of Court to file a Petition for a Writ of Mandamus or In the Alternative a Writ of Prohibition.

PETITIONER VICTORIA requests that the Petition be filed and set for hearing, and for any other relief, general and special, to which PETITIONER VICTORIA may be entitled.

WHEREFORE, PETITIONER VICTORIA seeks permission to pursue a Nevada Supreme Court order for the following:

1. mandating the District Court to allow VICTORIA GIAMPA to file her Motion in Family Court which seeks a final order pursuant to NRCP 60(b) and Nevada Supreme Court January 25, 2008 Decision;

2. declaring VICTORIA GIAMPA not a vexatious litigant;

3. transferring Judge Sandra L. Pomrenze based on bias;

4. any and all such other relief this Court deems appropriate.

DATED this 12th day of SEPTEMBER, 2008.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
Petitioner In Proper Person

NOTICE

TO: DISTRICT COURT JUDGE SANDRA L. POMRENZE, RESPONDENT

TO: CHARLES F. GIAMPA – PLAINTIFF, REAL PARTY IN INTEREST

TO: BRYCE C. DUCKWORTH, ESQ. – ATTORNEY FOR PLAINTIFF, REAL PARTY IN INTEREST

PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION FOR LEAVE OF COURT TO FILE PRO SE PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION for hearing before the NEVADA SUPREME COURT, 201 S. Carson Street, Suite 201, Carson City, Nevada on the ____day of _____, 2008 in Department __ at ___ _.m., or as soon thereafter as the parties can be heard.

DATED this 12th day of SEPTEMBER, 2008.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Proper Person

FACTUAL AND LEGAL ARGUMENT
(Points and Authorities)

VICTORIA has satisfied all requirements and conditions to obtain an issuance of a Writ of Mandamus or in the alternative a Writ of Prohibition. Generally, a Writ of Mandamus is available to control an arbitrary or capricious exercise of discretion, and a Writ of Prohibition is available when a District Court acts without or in excess of its judgment. VICTORIA references the following Nevada Revised Statutes:

> NRS 34.160 Writ may be issued by Supreme Court and district courts; when writ may issue. The writ may be issued by the Supreme Court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.

NRS 34.170 Writ to issue when no plain, speedy and adequate remedy in law. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

VICTORIA has established by a preponderance of evidence that an application for a Writ is entitled to immediate and full relief from this Court as more fully outlined by the foregoing facts. VICTORIA references the following Nevada Revised Statutes:

NRS 34.020 Writ may be granted by Supreme Court and district courts; when writ may issue.

1. This writ may be granted, on application, by the Supreme Court, a district court, or a judge of the district court. When the writ is issued by the district court or a judge of the district court it shall be made returnable before the district court.

RULE 21. WRITS OF MANDAMUS AND PROHIBITION DIRECTED TO A JUDGE OR JUDGES AND OTHER EXTRAORDINARY WRITS

(a) Mandamus or Prohibition to a Judge or Judges; Petition for Writ; Service and Filing. Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk of the Supreme Court with proof of service on the respondent judge or judges and on all parties to the action in the trial court. The

> petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed filing fee, the clerk shall docket the petition and submit it to the court.

On 5/4/07, VICTORIA files MOTION FOR DISCOVERY AND EVIDENTIARY HEARING; MOTION TO REINSTATE AND TO ENFORCE SUPPORT OBLIGATIONS AND TO REDUCE SUPPORT ARREARS WITH INTEREST TO JUDGMENT; AND MOTION FOR EX PARTE ORDER FOR WAGE ASSIGNMENT AND MOTION FOR IMPOSITION OF SANCTIONS IMMEDIATELY DUE AND PAYABLE AGAINST PLAINTIFF. Hearing Date (continued 31 days) to 6/20/07, 11:00 a.m.

On 5/10/07, VICTORIA files APPLICATION FOR AN ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN WILFUL AND DELIBERATE CONTEMPT FOR FAILURE TO MAKE TIMELY MONTHLY SUPPORT PAYMENTS, AND TO REDUCE SUPPORT ARREARS TO JUDGMENT, AND FOR IMPOSITION OF A WAGE ASSIGNMENT, AND FOR SANCTIONS AGAINST PLAINTIFF UPON AND FOR AN ORDER SHORTENING TIME. Hearing Date (shortened 6 days) to 5/4/07, 11:00 a.m.

On 6/4/07, VICTORIA files MOTION TO STRIKE PLAINTIFF'S REPLY TO DEFENDANT'S REPLY TO PLAINTIFF'S COUNTERMOTION FOR FINDING DEFENDANT TO BE A VEXATIOUS LITIGANT; COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR REINBURSEMENT OF ATTORNEY'S FEES TO PLAINTIFF. Hearing Date **(continued 20 days)** to **6/24/07, 11:00 a.m.**

On 6/4/07, VICTORIA files MOTION TO STRIKE PLAINTIFF'S REPLY TO PLAINTIFF'S REPLY AND OPPOSITION TO DEFENDANT'S APPLICATION FOR AN ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN WILLFUL AND DELIBERATE CONTEMPT FOR FAILURE TO MAKE TIMELY MONTHLY SUPPORT PAYMENTS, AND TO REDUCE SUPPORT ARREARS TO JUDGMENT, AND FOR IMPOSITION OF A WAGE ASSIGNMENT, AND FOR SANCTIONS AGAINST PLAINTIFF. Hearing Date **(delayed 50 days)** to 7/24/07, 11:00 a.m.

On 6/8/07, VICTORIA files MOTION TO CONSOLIDATE HEARING DATES. Hearing Date **(delayed 46 days)** to 7/24/07, 11:00 a.m.

On 6/20/07, VICTORIA files MOTION FOR DISCOVERY AND EVIDENTIARY HEARING; MOTION TO REINSTATE AND TO ENFORCE SUPPORT OBLIGATIONS AND TO REDUCE SUPPORT ARREARS WITH INTEREST TO JUDGMENT; AND MOTION FOR EX PARTE ORDER FOR WAGE ASSIGNMENT AND MOTION FOR IMPOSITION OF SANCTIONS

IMMEDIATELY DUE AND PAYABLE AGAINST PLAINTIFF. Hearing Date **(delayed 47 days)** to 6/20/07, 11:00 a.m.

On 7/1/07, Judge Pomrenze files AFFIDAVIT OF SANDRA L. POMRENZE IN RESPONSE TO DEFENDANT'S MOTION FOR CASE REASSIGNMENT AND/OR RECUSAL FOR CAUSE which states:
SANDRA L. POMRENZE, being duly sworn, deposes and says:

> *On July 1, 2007 this case was randomly reassigned from Department C to this department.*
>
> *I have no bias against either party in this case.*

VICTORIA is not certain if the affidavit a district court judge files sufficiently complies with EDCR 2.21 which states in pertinent part:

> (c) Affidavits must contain only factual, evidentiary matter, conform with the requirements of N.R.C.P. 56(e), and avoid mere general conclusions or argument. Affidavits substantially defective in these respects may be stricken, wholly or in part.

On 7/9/07, VICTORIA files MOTION FOR RELIEF FROM JUDGMENT DUE TO A HISTORY OF FACTS AND ATTENDANT CIRCUMSTANCES EVIDENCING PLAINTIFF'S FRAUD UPON THE COURT PURSUANT TO NRCP 60(b). Hearing Date **(continued 29 days)** to 8/7/07, 9:00 a.m.

On 7/9/07, VICTORIA files AMENDED MOTION TO STRIKE PURSUANT TO NRCP 12(f) and MOTION FOR IMPOSITION OF SANCTIONS AGAINST PLAINTIFF IMMEDIATELY DUE AND PAYABLE TO DEFENDANT.

On 7/16/07, ATTORNEY DUCKWORTH files MOTION TO CONTINUE HEARING; MOTION TO SET ASIDE ORDER SHORTENING TIME, OR ALTERNATIVELY MOTION TO ALTER AND AMEND ORDER SHORTENING TIME; EX-PARTE MOTION FOR ORDER SHORTENING TIME. Hearing Date **(delayed 29 days)** to 8/14/07, 2:00 p.m.

VICTORIA argues that the delay to continue the hearing is yet one more obstruction in the path of the best interests of the children and is meant only to frustrate VICTORIA'S right and the children's right to an expedient disposition of their motions.

On 7/17/07, VICTORIA files AMENDED MOTION TO STRIKE PURSUANT TO NRCP 12(f) AND MOTION FOR IMPOSITION OF SANCTIONS AGAINST PLAINTIFF IMMEDIATELY DUE AND PAYABLE TO DEFENDANT. Hearing Date **(scheduled)** for 7/24/07, 9:00 a.m.

At the 7/19/07 Hearing held before Judge Pomrenze, having recently been reassigned from another department, child custody, financial and other issues were paramount to this hearing upon the following colloquy between the parties.

> *JUDGE POMRENZE: There are the children themes, and I've had a chance to at least a little bit to review what is incredibly a huge file. But what it does disclose is some unfortunate decisions made with*

regard to these 2. However, within less than a month, neither child will be a child. I won't have jurisdiction over either one of them. So whatever has happened to Marco and Sarah, and I do this as well (washing hands) oh, well, too late and it's unfortunate, okay. I'm not saying this lightly, it's very unfortunate. I think these children have been through an awful lot. And I don't think they've benefited from the parents. Okay. But there's not much you can do now. They're both essentially emancipated, and hopefully they can get past the problems they've had and kind of find their way in being productive adults. I can only hope that, but in terms of making any decisions with regard to these two, it's just way too late.

JUDGE POMRENZE: Ma'am, I look at violations at the time they occurred. I don't look at them necessarily but I just want you to understand at this point in time I'm getting this case, which is now as I said, a multi-bucket case, so far from me being able to address those issues because, unfortunately now these children are close -- one's emancipated and the other one is going to emancipate in four weeks. There is really not much I can do to issue Orders to remedy how Marco may have been raised. Okay. It's just too late - it is - as a practical matter. And I want you to understand that that's too late. Does that mean I cannot sanction a party for violating Orders? (Tr. Pg. 16/L24)

VICTORIA challenges the constitutionality of the statutes and argues that Judge Pomrenze's courtroom demeanor and conduct toward VICTORIA implied a hostile feeling and

spirit of ill will and resulted in prejudice to VICTORIA and her children. The record in this case is replete with the Court's implicit disapproval of VICTORIA attempts to protect these children as an impossibility because in the Court's minds these minor children [15 and 16 year old] were already emancipated. VICTORIA contends that such hostile feeling and spirit of ill will from the inception of Judge Pomrenze's appearance in this case requires her immediate disqualification. VICTORIA argues that Judge Sanchez and Judge Pomrenze both subjectively characterized VICTORIA'S deep concerns about her children as futile. The brief portion of the record cited above shows Judge Pomrenze denying VICTORIA'S seemingly reasonable requests to protect her children causes her to conclude that Judge Pomrenze has demonstrated a fixed anticipatory judgment that requires her disqualification to avoid the appearance of impropriety and restore the absolute confidence of the parties in the fairness of these proceedings. In re Disqualification of Cleary, 723 N.E. 2d at 1107. VICTORIA argues that Judge Sanchez and Judge Pomrenze made age-based distinctions of the minor children that violates the Equal Protection Clause. VICTORIA further argues that the statutes at issue are facially neutral. It creates no classifications and sets forth that child custody determinations should be based solely on "the best interest of the child." This Court applied an unevenhanded application to the statutes and deliberately violated NRS 125.480 by rushing the minor children into early emancipation without procedural due process notice and an opportunity to be heard; thus, denying the minor children a relationship with VICTORIA and deprived her of her rights and responsibilities of child rearing. VICTORIA contends that any parent of ordinary

intelligence would not give up hope to try to convince the Court to protect these children. The brief portion of the record cited above shows Judge Pomrenze denying VICTORIA'S seemingly reasonable requests to issue an order to protect her children and demonstrates a fixed judgment that requires her to recuse herself and restore the absolute confidence of the parties in the fairness of these proceedings. VICTORIA argues that Nevada's public policy in determining custody of a minor child, the sole consideration of the court, is the best interest of the child" and not treating minors arbitrarily by denying them a right based solely on a few months' difference in age.

VICTORIA contends that this case should be reviewed by the Chief District Court for reassignment and/or recusal for cause as follows:

> (a) The chief judge shall have the authority to assign or reassign all cases pending in the district.
> (d) Judges who disqualify themselves from hearing a case must direct the entry of an appropriate minute order for reassignment on a random basis.
> e) Under the supervision of the chief judge, the court administrator shall assign appropriate matters to available senior judges and visiting judges.

VICTORIA argues that Judge Pomrenze's legal error, motivated by bad faith, ignores the children's troubling issues under the best interests of the children standard and focuses instead on matters that are wholly irrelevant, such as the fact that ATTORNEY DUCKWORTH abuses the process and requests a needless continuance on the eve of a hearing. Attorney Duckworth represents to the Court and

states in his motion that he is from the law firm Smith, Larsen & Wixom, but he does not inform the Court the reason that another attorney from this same firm could not make an appearance. After all, the hearing scheduled for *July 24, 2007*, is simply on the Court's Motion calendar and certainly is not a trial or an evidentiary hearing arguably justifying Attorney Duckworth's specific attendance. His request for a continuance is yet another dilatory tactic and bad-faith interference with the administration of justice. In addition, Judge Pomrenze did not evaluate the timeliness of ATTORNEY DUCKWORTH'S motion and failed to balance VICTORIA'S constitutional right to a hearing against the inconvenience and delay that would result from the continuance.

VICTORIA contends that the language used by Judge Pomrenze in the *July 19, 2007,* Court Minute Order is facially and literally ambiguous and unreasonably subject to interpretation requiring immediate court intervention for correction and/or clarification in order to ensure compliance. VICTORIA contends that generally the Nevada Rules of Appellate Procedure deem a Minute Order a nonappealable Order. Judge Pomrenze's Minute Orders on *July 19, 2007* as follows:

> *Court noted ongoing issues regarding the children, however, both children will have emancipated within a month, therefore, those issues will not be addressed. Court noted issues of arrearages and attorney's fees. Argument regarding request to continuance due to conflicting schedule of attorney Duckworth. Defendant recited her statement on the record....*

All pending Motions will be addressed at the next hearing date; 7/24/07

Motions CONTINUED to 8/28/07.

No Order is required from today, the Minutes will stand as the Order.

Hearing Date (delayed 40 days) to 8/28/07.

VICTORIA challenges for a second time this Court's premature mandate that these *minor children will soon emancipate without first issuing orders* regarding the minor children's best interest and the need for intervention into issues of their education and psychological and medical needs pursuant to NRS 125.140(2). These children still have no capacity to contract for a rental agreement at the Country Club Towers, and they are still subject to legal control by their father. This Court has never conducted an independent hearing nor issued Orders declaring the minor children legally emancipated pursuant to NRS 129.080: Judicial Emancipation of Minors and NRS 129.120 Hearing; Duties and powers of court; considerations in grant or denial of petition which states in pertinent part:

> 4. The grant or denial of the petition is a matter within the discretion of the court. In making its determination, the court shall consider:
> a.) whether the parents or guardian of the minor have consented to emancipation;
> b.) whether the minor is substantially able to support himself without financial assistance;

c.) whether the minor is sufficiently mature and knowledgeable to manage his affairs without the guidance of his parents or guardian; and
d.) whether the emancipation is in the best interest of the minor.

VICTORIA argues that Judge Pomrenze and this Court unlawfully and unnecessarily completely severed VICTORIA'S parental rights. VICTORIA contends that a reasonable person would conclude that by this Court awarding CHARLES a change of custody [CHARLES shunning the children and dumping them in their own apartment at the Country Club Towers] does not only encourage an illegal snatching but also encourage dumping the children away from VICTORIA trying to seek visitation. VICTORIA further contends that CHARLES took steps to keep the children away from her by renting an apartment for them and that such living arrangements deprived VICTORIA of any visitation and/or custody rights. VICTORIA contends that CHARLES should not be permitted to benefit from such conduct.

VICTORIA argues that a reasonable person would conclude that emerging in this Family Court is a new, unconstitutional standard for termination of parental rights: If a "fit" parent is awarded primary custody based upon receiving a sham de facto custody and the offending parent shuns his minor children and absconds them into a living arrangement separate and apart from both parents, the primary parent with the Court's blessing basically has rushed emancipation of the minor children and the non-custodial parent is forever deprived of parental rights and the children are forever deprived of being parented and

protected. VICTORIA contends that it is regrettable that Judge Sanchez and now Judge Pomrenze have altogether abandoned the statutory mandates of the best interests of the minor children and are willing to permit parental rights to be terminated in which minor children are found to be agreeably living in a separate and third residence separate and apart from both parents. VICTORIA further contends that Judge Sanchez's and now Judge Pomrenze's attitude and reasoning that these children are emancipated is legally and constitutionally unacceptable. It is inconceivable that any Court could find in this case that there was no way in which the children's best interest could be served by rushing to emancipate minor children thereby keeping them permanently away from their mother. Constitutional rights do not become moot and come into being magically only when the children attains the state-defined age of majority. VICTORIA believes she still has all the moral and social authority that comes with parenting her (2) children.

VICTORIA further challenges Judge Pomrenze's unevenhanded application of "emancipation" as a device designed to impose a different burden on different classes of persons. Phelps. v. Phelps, 337 N.C. 344, 446 S.E.2d 17, 21 (1994). VICTORIA also argues that this court violates her equal protection by considering the minor children an *older age* in making a modification of a change of custody. VICTORIA contends that the rights to equal protection and due process of law are guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 8(5) and Article 4, Section 21 of the Nevada Constitution. In particular, the Fourteenth Amendment states that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws." West v. State, 119 Nev. 410, 419, 75 P.3d 808, 814 (2003).

Apart from VICTORIA'S challenge to the constitutionality of the statutes, she also contends that the statutes violate the Fourteenth Amendment because the statutory framework offers no procedural due process by which a parent is given notice of a hearing to determine and define "joint custody," no notice of a violation of "legal custody" and "physical custody" and she was afforded no hearing prior to imposition of massive sanctions or a referral to mediation. In Mathews v. Eldrige, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Supreme Court identified three factors to determine whether a procedural due process violation has occurred: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

VICTORIA contends that in Phelps, the Court held that custody determination statutes created no classification of an *older child* either on its face or in its application. VICTORIA challenges Judge Sanchez' ruling "...that now the daughter will *soon emancipate* and there will be an issue regarding child support." VICTORIA further argues that NRS 125.480 is facially neutral and creates no classification of *children* either on its face or in its application and sets

forth that *child custody determinations* should be based solely on "the best interest of the child" *not best interests of emancipated minor children.* VICTORIA contends that NRS 125.510 also clearly makes no distinction between children and emancipated children or otherwise. VICTORIA argues that it creates no classifications and sets forth that child custody determinations should be based solely on "the best interest of the *child.*" The policy behind NRS 125.480(3)(a) is to ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage and to encourage the parents to share the rights and responsibilities of child rearing.

VICTORIA argues that this Court violates VICTORIA'S substantial due process rights when Judge Sanchez and now Judge Pomrenze infringes upon VICTORIA'S fundamental right to keep her family together and rush to emancipate her minor children. VICTORIA argues that the United States Supreme Court has held that certain aspects of family autonomy such as the right to custody of one's children and the right to keep the family together are fundamental liberty interests protected under substantive due process. Quilloin v. Walcott, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978). Judge Sanchez and Judge Pomrenze infringed on her and the children's fundamental rights when they rushed to emancipate the minor children rather than make short-term orders regarding their welfare and education. VICTORIA further argues that she is in a much better position to conclude or determine that one or both of her children is competent and financially able to emancipate from the family and to live alone fending for themselves. Certainly, VICTORIA having raised and lived

with Sarah and Marco for much of their lives was in a better position to determine their competency and maturity to be free from their mother's influence.

VICTORIA further challenges the constitutionality of the statutes and contends that NRS 125.510 as interpreted by the court violates principles of equal protection by discrimination based on older children's 'ages' VICTORIA argues that this Court should have evaluated NRS 125.480, NRS 125.490, NRS 125.510 under a heightened level of scrutiny because these statutes implicates the children's fundamental right to equal protection of the law. VICTORIA further argues that Judge Sanchez and Judge Pomrenze discriminates against a suspect class of older aged-children and infringes on their fundamental rights as "minor children" since Judge Sanchez and Judge Pomrenze were quick to rush the children into early emancipation rather than make short-term orders regarding their welfare and education. The United States Supreme Court expressly stated that "We have little doubt that the Due Process Clause would be offended '[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest,'" Smith v. Organization of Foster Families, 431 U.S. 816, 862-863, 97 S.Ct. 2094, 2119, 53 L.Ed.2d 14 (1977). VICTORIA argues that when Judge Sanchez and Judge Pomrenze rushed the minor children to emancipation, the Court put the parties in an adversarial position, and until the temporary order is reversed the interests of the children and the parents do diverge as adversaries especially when the children are at an immature age. VICTORIA argues that even if the minor

children presents evidence in a different hearing that they are mature, they still must satisfy the judge that this is so with a heightened standard of proof. VICTORIA challenges the constitutionality of this extra heightened standard of proof issue brought in the midst of ongoing child proceedings under a preponderance of evidence standard which resulted in Marco keeping up with his deliberate attempts to provoke arguments with his mother. Talks of Charles emancipating the children was a further factor which caused considerable disruption and perpetuated more friction in VICTORIA'S unsuccessful attempts to seek visitation and/or custody. VICTORIA argues that the use of this heightened standard of proof does little to facilitate a fair and reliable result and imports an element from the adversarial process into this child custody case where it has no rightful place. VICTORIA argues that the Court rushing the children to early emancipation totally severed her family bond with her children rather than promising any comfort. VICTORIA argues that the Court's selective blindness to these minors desperately in need of constitutional protection and loving parental guidance and mature advice is bewildering and distressing. This Court failed to take into consideration that VICTORIA and her children share a vital interest in a quick determination of a permanent order rather than a temporary never-ending-determination of their natural relationship. VICTORIA also contends that her losses cannot be measured. In this case, CHARLES shunned his children and virtually dumped Sarah in an apartment at the Country Club Towers after just reaching the age of 16 and Marco was only 15 years of age. Judge Sanchez and Judge Pomrenze effectively foreclosed the possibility of VICTORIA ever parenting her children again and the children being parented by

VICTORIA. In addition, a reasonable person would assume that with the help of this Court, ATTORNEY DUCKWORTH and CHARLES sought Orders for a modification of child custody knowing that the children were living alone without parental supervision at the Country Club Towers which basically pit their immature interests [dropping out of school and aimlessly loitering] against those of their mother.

VICTORIA contends that the policy behind NRS 125.480, *Best interest of child*... is to ensure that *minor children* have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage and to encourage the parents to share the rights and responsibilities of *child* rearing.

> 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:
> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and....

VICTORIA argues that Judge Sanchez failed to make short-term temporary adjustments to the parties' custody arrangement to protect and safeguard her children's welfare which includes treatment for Marco's ADHD and for both children receiving an education from a traditional high school. Also, Judge Pomrenze fails to make short-term

temporary adjustments to the parties' custody arrangement to protect and safeguard the children's welfare which includes treatment for Marco's ADHD and both minor children receiving an education from a traditional high school pursuant to NRS 125.140(2). Judge Pomrenze also abuses her discretion and ignores both minor children's welfare pursuant to NRS 125.510 9(b) which states in pertinent part:

> 9. Except where a contract providing otherwise has been executed pursuant to NRS 123.080, the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases:
> (b) When the child reaches 18 years of age if he is no longer enrolled in high school, otherwise, when he reaches 19 years of age.

VICTORIA argues there are still several unheard and unresolved motions pending before Judge Pomrenze which she refuses to hear and decide as follows:

a.) *November 1, 2005: Defendant's Motion to Set Aside Temporary Order For Change of Physical Custody Pursuant to NRCP 60(b);*

b.) *April 30, 2007: Defendant's Application for An Order to Show Cause Why Plaintiff Should Not Be Held in Willful and Deliberate Contempt for Failure to Make Timely Monthly Support Payments, and to Reduce Support Arrears to Judgment, and For Imposition of a Wage Assignment, and for Sanctions Against*

Plaintiff; Plaintiff's Countermotion for Sanctions and Attorney's Fees;

c.) *May 4, 2007: Defendant's Motion For Discovery and Evidentiary Hearing; Motion to Reinstate and To Enforce Support Obligations and To Reduce Support Arrears with Interest to Judgment; and Motion for Ex Parte Order for Wage Assignment and Motion for Imposition of Sanctions Immediately Due and Payable Against Plaintiff;*

d.) *June 4, 2007: Defendant's Motion To Strike Plaintiff's Reply to Defendant's Reply to Plaintiff's Countermotion For Finding Defendant To Be a Vexatious Litigant; Countermotion for the Imposition of Sanctions Against Defendant and For Reimbursement of Attorney's Fees to Plaintiff;*

e.) *June 4, 2007: Defendant's Motion to Strike Plaintiff's Reply to Plaintiff's Reply and Opposition to Defendant's Application For an Order to Show Cause Why Plaintiff Should Not Be Held in Willful and Deliberate Contempt For Failure To Make Timely Monthly Support Payments, and To Reduce Support Arrears To Judgment, and For Imposition of a Wage Assignment, and for Sanctions Against Plaintiff ;*

f.) *May 4, 2007: Defendant's Motion for Discovery and Evidentiary Hearing; Motion to Reinstate and to enforce Support Obligations and to Reduce Support Arrears with Interest to Judgment; and Motion for ex Parte Order for Wage Assignment and Motion for Imposition of Sanctions Immediately Due and Payable*

Against Plaintiff; and Plaintiff's Countermotion for Attorney's Fees and Sanctions Against Defendant;

g.) *July 9, 2007: Defendant's Motion for Relief from Judgment Due to a History of Facts and Attendant Circumstances Evidencing Plaintiff's Fraud upon the Court Pursuant to NRCP 60(b); and Plaintiff's Countermotion for Sanctions Against Defendant and an Award of Attorney's Fees dated July 9, 2007;*

h.) *July 9, 2007: Defendant's Amended Motion to Strike Pursuant to NRCP 12(f) and Motion for Imposition of Sanctions Against Plaintiff Immediately Due and Payable to Defendant.*

On 7/20/07, Chief District Court Judge Kathy A. Hardcastle issues the unappealed and unchallenged Court Order as follows:

JUDGE HARDCASTLE: Plaintiff's Countermotion for Finding Defendant to be a Vexatious Litigant shall be denied without prejudice.

JUDGE HARDCASTLE: Plaintiff's Countermotion for the Imposition of Sanctions and For Reimbursement of Attorney's Fees shall also be denied.

On 7/31/07, VICTORIA files MOTION FOR CORRECTION AND/OR CLARIFICATION OF THE JULY19, 2007 COURT MINUTE ORDER PURSUANT TO NRCP 60(b). Hearing Date **(continued 28 days)** to 8/28/07, 11:00 a.m., (8) days after Marco reaches the age of 18. Again, VICTORIA sought

but has been unable for one reason or another to obtain from Judge Pomrenze a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the *August 28, 2007* hearing. The Minute Order does not in any way identify or itemize the pending motions. Judge Pomrenze fails to immediately act to resolve any and all such clerical error on certain issues. This Court deprives VICTORIA of due process when it fails and refuses to enter Orders but instead shows favoritism to CHARLES and counsel of record when it allows them to memorialize the relief they seek in Findings of Facts and Conclusions of Law.

On 8/8/07, CHARLES swears under oath and files his Affidavit of Financial Condition and miserably fails to purge his contumacious conduct by fabricating the following:

> *"Since the time I requested custody of our children, I have maintained a separate residence from my wife. Earlier this month, I moved back in with my wife to reconcile. Our relationship has been strained as a result of these proceedings."*

VICTORIA contends that a reasonable person would conclude that CHARLES is simply lying in order to cover up his fraud upon the Court; and VICTORIA further contends that had Sarah been interviewed, she would have stated that she never speaks to CHARLES' wife and living with them at the Viking residence is out of the question. On *December 2, 2005*, CHARLES attempts to mitigate the harm he inflicted by admitting just days before the hearing commenced that he was guilty of contempt:

"During the past several months, I have been saddled with additional expenses in the form of a separate home for our children (with monthly rental and living expenses in excess of $1,500, my personal living expenses and the expenses associated with my current spouse's home.)

On 8/14/07, VICTORIA files MOTION FOR A FINAL CHILD CUSTODY AND SUPPORT ORDER. Hearing Date **(delayed 45 days)** to 9/28/07, 10:00 am. VICTORIA sought to uphold and enforce any and all Court Orders for child custody and support relief that for one reason or another has been put on administrative hold. The Court improperly vacated VICTORIA'S pending motions. VICTORIA files a Notice of Appeal and argues that the filing of the appeal in no way stays her interest in challenging CHARLES' contempt motion and for the Court to impose sanctions.

On 8/25/07, Marco's birth date - age 18.

On 8/21/07, VICTORIA files PRE-HEARING BRIEF restricted to the Court's Order of 10 pages. Hearing Date **(scheduled)** for 8/28/07, 11:00 a.m.

On 8/21/07, VICTORIA files AFFIDAVIT IN SUPORT OF DEFENDANT'S MOTION FOR CASE REASSIGNMENT AND/OR RECUSAL OF DISTRICT COURT JUDGE SANDRA L. POMRENZE FOR CAUSE.

On 8/23/07, VICTORIA files RESPONSIVE BRIEF TO PLAINTIFF'S BRIEF SUMMARIZING ISSUES remaining before the Court. Hearing Date **(scheduled)** for 8/28/07, 11:00. VICTORIA'S REQUEST FOR RELIEF:

1.) an accounting, discovery and an evidentiary hearing should be GRANTED;
2.) child support arrears should be GRANTED and reduced to judgment;
3.) spousal support arrears should be GRANTED and reduced to judgment;
4.) property equalization debt arrears should be GRANTED and reduced to judgment;
5.) NRCP 60(b) relief should be GRANTED in its entirety;
6.) CHARLES is subject to deferred sanctions.

On 8/23/07, VICTORIA files EXHIBITS IN SUPPORT OF HEARING ON CHILD CUSTODY, VISITATION AND SUPPORT ISSUES. Hearing Date **(scheduled)** for 8/28/07, 11:00 a.m.

On 8/23/07, VICTORIA files SCHEDULE OF CHILD SUPPORT ARREARAGES from January 2006 to December 2006 and files SCHEDULE OF SPOUSAL SUPPORT ARREARAGES from May 2007 to August 2007.

On 8/24/07, VICTORIA files MOTION TO CONTINUE THE AUGUST 28, 2007 HEARING DATE. Hearing Date **(delayed 46 days)** to 10/9/07, 11:00 a.m. VICTORIA requests a consolidation of her motions.

At the 8/28/07 Hearing, the parties appeared before Judge Pomrenze and she summarily vacated VICTORIA'S pending motions, and directed her instead to determine and submit to counsel of record a final figure that CHARLES would consider and then pay in full by cashier's check within 60

days. Judge Pomrenze's Orders certain hearing dates vacated without proper authority and for other than good cause as follows:

> Defendant's request for sanctions for Plaintiff's alleged violation of prior orders is DENIED;
>
> Defendant's request for Plaintiff to provide evidence of payments is DENIED;
>
> Any pending motions related to custody matters are DENIED as being moot;
>
> As to any other pending motions related to financial matters, rulings are DEFERRED pending the parties making a genuine attempt to reach a resolution;
>
> Hearing set for 9/28/07 at 10: a.m. is VACATED;
> Hearing set for 10/2/07 at 10a.m is VACATED;
> Hearing set for 10/9/07 at 11am is VACATED.

VICTORIA argues that Judge Pomrenze would further act to violate VICTORIA'S right to procedural due process when disallowing a Court return date or any other remaining avenue by vacating her numerous motions where she could obtain relief from the Court as follows:

> *ATTORNEY DUCKWORTH: Okay. So is there a return hearing date?*
> *THE COURT: Nope.*
> *ATTORNEY DUCKWORTH: Are all hearings vacated –*
> *THE COURT: Everything's vacated –*

ATTORNEY DUCKWORTH: Okay. ...
(Tr.P.25/L14-19)

On 8/31/07, VICTORIA files JUDICIAL COMPLAINTS AGAINST JUDGE POMRENZE, DISTRICT JUDGE FOR THE EIGHTH JUDICIAL DISTRICT arguing that Judge Pomrenze and JUDGE GLORIA S. SANCHEZ commits willful misconduct and violates Judicial Canons and Rules of Professional Conduct.

On 9/6/07, VICTORIA writes a letter to counsel of record indicating that she was in the process of retaining a certified public accountant to assist her with calculating a final figure to assist in formulating a reasonable settlement offer to close this case. VICTORIA contends that impliedly this offer, upon acceptance by CHARLES, would act as an accord and satisfaction. Nevada Courts have consistently held that a prerequisite for the finding of an accord and satisfaction is a clearly established meeting of the minds.

On 9/7/07, ATTORNEY DUCKWORTH responds to VICTORIA'S letter with an unwillingness to submit a good faith counteroffer or settle in the future by stating as follows:

> *Please be advised that Mr. Giampa does not consent or agree to a continuance of the timeline established by the Court."*

Clearly, CHARLES' response does not appear to be consistent with a party in good faith settlement posture. Absolutely no cooperation from him, nor his counsel of record, could be had.

Despite being Ordered by Judge Pomrenze not to file any more papers, on October 20, 2007, ATTORNEY DUCKWORTH commits abuse of process and files in bad faith an Order to Show Cause Petition.

On 9/12/07, Judge Pomrenze files AFFIDAVIT OF SANDRA L. POMRENZE IN RESPONSE TO DEFENDANT'S MOTION FOR CASE REASSIGNMENT AND/OR RECUSAL FOR CAUSE.

VICTORIA argues that Judge Pomrenze's willful misconduct in her dilatory delay evidenced by several unheard and unresolved motions pending before her in which she refuses to hear and decide should be a basis for her disqualification and another judge should be assigned to hear this case.

On 9/28/07, once VICTORIA obtained a calculation on a final figure from her accountant, she responded promptly by hand delivering a final figure and Assumptions 1-10 to ATTORNEY DUCKWORTH to demonstrate her genuine effort to resolve these proceedings amicably.

On 10/2/07, CHARLES files EX-PARTE MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR CONTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN AWARD OF ATTORNEY FEES, (1) month prior to rejecting VICTORIA'S genuine offer of settlement in a bad faith attempt to evade VICTORIA'S pending motions and

settlement offer. Hearing Date **(delayed 42 days)** to 11/13/07, 2:00 p.m.

VICTORIA contends that once again ATTORNEY DUCKWORTH'S motion is devoid of Points and Authorities. VICTORIA contends that CHARLES filing a Contempt Motion was solely an abuse of process to unreasonably delay litigation and delay an evidentiary hearing which was grossly unreasonable and made in bad faith with no hope for VICTORIA to recover. It served no other purpose other than to cause delay, harass and increase expenses in this litigation. ATTORNEY DUCKWORTH knowingly and recklessly filed in bad faith the Ex-Parte Motion For Order to Show Cause... against VICTORIA for the sole purpose of harassment. His malicious conduct multiplied these proceedings.

VICTORIA argues that although she filed an appeal, this Court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed Order, and this Court does have jurisdiction to consider the portion of VICTORIA'S motion concerning contempt because the district court has the power to enforce custody provisions pending appeal. That issue is collateral to the issues before this court on appeal from the divorce decree and demands reconsideration.

On 10/22/07, VICTORIA files NOTICE OF APPEAL from the August 28, 2007 Order.

On 10/25/07, VICTORIA files OBJECTION AND RESPONSE TO PLAINTIFF'S EX-PARTE MOTION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE

HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR CONTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN AWARD OF ATTORNEY FEES; AND DEFENDANT'S COUNTERMOTION FOR AN ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR DELIBERATE AND WILLFUL VIOLATION OF COURT ORDER(S) FOR MONTHLY SUPPORT. Hearing Date **(scheduled)** for 11/13/07.

VICTORIA argues that Judge Pomrenze failed to impose sanctions pursuant to NRCP 11 for ATTORNEY DUCKWORTH'S bad faith and knowing recklessness and abuse of process in multiplying proceedings solely for the purpose of harassing VICTORIA and seeking sanctions for fees. VICTORIA contends that the Courts have recognized that ..."bad faith is required for sanctions under the court's inherent power." Fink v. Gomez, 239 F.3d 989, 993 (9th Cir.2001). The 9th Circuit has found that an attorney's attempt to influence or manipulate proceedings in order to gain a tactical advantage are sanctionable under a court's inherent power. Fink v. Gomez, 239 F.3d 989, 994 (9th Cir. 2001). ATTORNEY DUCKWORTH'S sanctionable activities were intentionally and knowingly done. ATTORNEY DUCKWORTH'S purpose in filing his motion was just as malign as the frivolousness that motivated it. The injury caused here was that as a result of VICTORIA filing a reply to ATTORNEY DUCKWORTH'S EX PARTE MOTION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR COTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN

AWARD OF ATTORNEY'S FEES, VICTORIA was ordered by Judge Pomrenze to pay ATTORNEY DUCKWORTH another $1,500.00 in fees.

On this date, Judge Pomrenze issues an Oral Order and improperly vacates VICTORIA'S motions scheduled to be heard on November 13, 2007. VICTORIA contends that a court's oral pronouncement from the bench, the clerk's minute order and even an unfiled written order are ineffective for any purpose.

On 11/5/07, ATTORNEY DUCKWORTH mails VICTORIA a letter summarily rejecting her offer to settle and did not tender a counteroffer in good faith.

> *Please be advised that Chuck Giampa rejects the settlement proposal set forth in your correspondence served upon this office October 19, 2007.*

On 11/8/07, the Court issues another Oral Order improperly vacating VICTORIA'S motions **(scheduled)** for 11/13/07. VICTORIA contends that generally a court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose.

On 11/19/07, VICTORIA files MOTION TO STAY JUDGMENT PENDING APPEAL. Hearing Date **(delayed 39 days)** to 12/27/07, 10:00 a.m.

On 11/21/07, VICTORIA files MOTION FOR RECONSIDERATION OF THE COURT ORDER OF SEPTEMBER 26, 2007, ON PLAINTIFF'S EX-PARTE

MOTION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR CONTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN AWARD OF ATTORNEY'S FEES; and DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORAL ORDER TO VACATE DEFENDANT'S OBJECTION AND RESPONSE TO PLAINTIFF'S EX-PARTE MOTION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR CONTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN AWARD OF ATTORNEY'S FEES; and DEFENDANT'S COUNTERMOTION FOR AN ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR DELIBERATE AND WILLFUL VIOLATIONS OF COURT ORDERS FOR MONTHLY SUPPORT [PURSUANT TO NRCP 60(b)]. Hearing Date **(delayed 37 days)** to 12/28/07, 10:00 a.m.

VICTORIA sought reconsideration of her motion because Judge Pomrenze has not yet ruled upon her moving papers and argues that she is entitled to a determination of her motion by this Court in a proper manner and upon reasonable time. VICTORIA contends that this Court should deny CHARLES' contempt motion in its entirety when he himself is in contempt of Court Orders. VICTORIA has further cause for concern because Judge Pomrenze's Minute Order is deliberately and purposefully silent as to the Court's ability and/or willingness to entertain an imposition of sanctions against CHARLES even though the parties' minor children would have each attained the age of majority.

On 12/18/07, VICTORIA files COUNTERMOTION TO STRIKE PURSUANT TO NRCP 12(f) and COUNTERMOTION FOR IMPOSITION OF SANCTIONS AGAINST PLAINTIFF. Hearing Date **(continued 9 days)** to 12/27/07, 11:00 a.m.

At the 12/27/07 Hearing, Judge Pomrenze issues the following Orders:

> *Argument regarding countermotion for attorney's fees, attorney Duckworth's contention that Defendant continues to raise custodial issues, Defendant's request for sanctions alleging that Plaintiff's Countermotion did not contain Points and Authorities and was therefore improper.*
>
> *12/28/07 HEARING is taken off calendar as the issues are on appeal;*
>
> *Defendant's Motion for Stay is Denied;*
> *Court finds Defendant is a Vexatious Litigator, given the number of motions filed over the years and the number which have been found to be non-meritorious, therefore, Defendant must get the permission of the Court to file any future motions;*
>
> *Plaintiff is awarded Attorney's Fees in the amount of $1,500.00;*
>
> *Defendant's request for sanctions against Plaintiff is denied as being non-meritorious.*

Plaintiff was not barred from filing a Countermotion and the Countermotion was meritorious in part.

VICTORIA brings to this Court's attention that in error she styled her previous Motion "Motion to Stay Judgment..." and presently requests that this Court *stay all proceedings pending appeal* because she meets the standards necessary to obtain a judgment for manifest error affecting a constitutional right. VICTORIA contends that generally a civil case will not be considered moot if an aggrieved party diligently and actively seeks relief from discernible and substantial consequences flowing from a lower tribunal's judgment. Boulet v. City of Las Vegas, 96 Nev. 611, 614 P.2d 8 (1980). VICTORIA contends that the Courts have ruled that when moving for a stay pending an appeal, a movant does not always have to show a probability of success on the merits; the movant must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay. Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark, 2000, 6 P.3d 982, 116 Nev. 650.

VICTORIA argues that ATTORNEY DUCKWORTH disregards Judge Hardcastle's Order when she declares that VICTORIA is not a vexatious litigant and proceeds to file his motion requesting a different judge to declare VICTORIA a vexatious litigant under legal theories he thought would ultimately prevail. ATTORNEY DUCKWORTH'S attempt to avoid the consequences of his wrongful vexatious motion should fall victim to the principle of res judicata. VICTORIA argues that the doctrine of res judicata would preclude Judge Pomrenze from issuing an

Order declaring VICTORIA a vexatious litigant. VICTORIA argues that Judge Pomrenze abuses her discretion in entering a pre-filing order against her and declaring her a vexatious litigant De Long, 912 F.2d at 1148, because her Order fails in the following ways:

1. does not contain a list of the filings and rulings that led the court to impose its broad of filing restriction;

2. makes no substantive findings as to the harassing nature of VICTORIA'S actions;

3. fails to set any standard against which a future court-access determination should be made;

VICTORIA argues that she has filed numerous motions and further argues that her motions were not vexatious because they had merit in trying desperately to protect her children from CHARLES' lack of supervision of their 2 minor children. Judge Pomrenze failed to look at both the number and content of VICTORIA'S filings as indicia of the frivolousness of her claims in her courtroom. The 9th Circuit has ruled that "the plaintiff's claims must not only be numerous, but also be patently without merit." Moy, 906 F.2d at 470. Judge Pomrenze's conclusion that VICTORIA is a vexatious litigant is clearly erroneous. VICTORIA brought forth evidence that the parties' children were living alone and unsupervised. Common sense dictates that VICTORIA, a stay-at-home mom, was trying desperately to protect the parties' 2 minor children. Clearly the large number of complaints filed in her motions were not grossly false or grossly exaggerated allegations and considered

vexatious. The 9th Circuit has stated that "...the simple fact that a plaintiff has filed a large number of complaints, standing alone, is not a basis for designating a litigation as "vexatious." DeLong, 912 F.2d at 1147.

In addition, Judge Pomrenze makes the following erroneous statements..."*given the number of motions filed over the years and the number which have been found to be non-meritorious...*". Judge Pomrenze improperly relies upon the filings made before another judge which do not interfere with VICTORIA'S motions still pending before Judge Pomrenze.

VICTORIA argues that Nevada does not have a court rule or statute authorizing Judge Pomrenze to declare VICTORIA a vexatious litigant and limit her access to the courts as a defendant defending an action for a custody matter for which she did not file. VICTORIA concedes that given the long history of this case, she has filed numerous motions, but not numerous complaints for divorce. That her past filings were not vexatious because they were not filed in bad faith in attempting to protect her children. That the number of motions filed by her did not contain false or exaggerated allegations. That she brought forth substantial evidence substantiating her claims for CHARLES' contempt and for alleging his and ATTORNEY DUCKWORTH'S willful misconduct, excessive delay, abuse of process and fraud upon the court. VICTORIA contends that Judge Pomrenze abuses its discretion when she bases her decision on an incorrect view of the law or a clearly erroneous finding of fact. United States v. Finley, 301 F.3d 1000, 1007 (9th Cir.2002).

VICTORIA also contends that Judge Pomrenze has not ruled on VICTORIA'S pending motions seeking redress but instead - with complete indifference - interferes with her attempts to file legal documents which results in constitutional due process violations and prejudices her right to future filings.

Judge Sanchez, *on February 11, 2004*, made the following inopposite statements about VICTORIA'S ability to file motions which proves Judge Pomrenze of bias and prejudice when she deems VICTORIA a vexatious litigant as follows:

> *JUDGE SANCHEZ: ...and defendant may be very well meaning, and she certainly is a brilliant litigant from -- in comparison to the normal litigants who don't have counsel because she – she cites the case law.*
>
> *She's -- she's you know, she's someone you'd want to hire if you had that kind of case where there were so many complex issues to litigate because she's extremely thorough.*

> *JUDGE SANCHEZ: There's numerous citations to transcripts, a lot of research. I mean, I can't conceive -- it must take months to research that kind of a brief, to file a ninety-nine page brief with twenty-two issues for relief. And she cites transcripts and case law and -- I mean, it's beyond the pale. We don't even have lawyers who've been practicing for thirty years filing those kinds of pleadings. So it's -- The benefit is that we know we have an informed litigant here who is not the normal uninformed pro per litigant who is at a loss as to what the law provides and what's required in terms of burden of proof.*

Chief District Court Judge Kathy A. Hardcastle issues the unappealed and unchallenged Court Order on *July 20, 2007* and inopposite finding of Judge Pomrenze:

> *JUDGE HARDCASTLE: Plaintiff's Countermotion for Finding Defendant to be a Vexatious Litigant shall be denied without prejudice.*
>
> *JUDGE HARDCASTLE: Plaintiff's Countermotion for the Imposition of Sanctions and For Reimbursement of Attorney's Fees shall also be denied.*

On 1/25/08, the Nevada Supreme Court issued an Order Dismissing Appeal which states in pertinent part:

> *Our review of the documents transmitted to this court pursuant to NRAP 3(e) reveals jurisdictional defects. This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. No statute or court rule authorizes an appeal from an order addressing motions to strike, motions for sanctions, or motions regarding discovery.*
>
> *In addition, while an order granting or denying an NRCP 60(b) motion is generally appealable, it appears that the district court has deferred ruling on all financial issues, which includes appellant's NRCP 60(b) motion.*

Once the district court enters a written order resolving the NRCP 60(b) motion, appellant, if aggrieved, may file an appeal from that order.

VICTORIA contends that that Ninth Circuit has crafted a procedure to allow for a remand to the trial court when facts arise which would allow for relief under Rule 60(b) after an appeal has been taken. Williams v. Woodford, 384 F.3d 567, 586 (9th Cir. 2004). Also "[A] notice of appeal filed after the district court announces judgment is not effective until the district court has disposed of all Rule 60(b) motions filed no later than ten (10 days after judgment is entered." Miller v. Marriott Int'l, Inc., 300 F.3d 1061, 1063-64 (9th Cir. 2002).

On 2/27/08, VICTORIA hand delivers REVIEW OF PLAINTIFF'S PROPOSED COURT ORDER OF DECEMBER 27, 2007 which reflects corrections that she believes needs to be made.

On 3/10/08, Judge Pomrenze's Notice of Entry of Findings of Fact, Conclusions of Law and Order state as follows:

1. The Defendant has filed a Notice of Appeal of this Court's prior Order rendered on September 26, 2007. Accordingly, this Court lacks jurisdiction to entertain the relief requested by way of Defendant's Motion for Reconsideration of the Court's Oral Order to Vacate Defendant's Objection and Response to Plaintiff's Ex-Parte Motion to Show Cause Why Defendant Should Not Be Held in Contempt of Court; Plaintiff's Motion for Contempt and for the Imposition of Sanctions Against Defendant and for an Award of Attorney's Fees. In this regard, those issues are

the subject of an appeal, and the hearing scheduled for December 28, 2007, at 10:00 a.m. should be vacated;

2. During the history of this litigation, the Defendant has filed numerous motions, frequently rearguing issues that previously were addressed by the Court. For the most part, Defendant's papers have been found to be non-meritorious or frivolous. Based on the frequency of her filing, as well as the nature of the issues raised in her papers, the Court finds the Defendant, Victoria Lugo-Giampa, to be a vexatious litigator;

3. Defendant's Motion to Stay Judgment Pending Appeals lacks merit, and the same should be denied;

4. Defendant's Countermotion for an Order to Show Cause Why Plaintiff Should Not Be Held in Contempt of Court for Deliberate and Willful Violation of Court Order(s) for Monthly Support lacks merit, and the same should be denied;

5. It is further ordered, adjudged and decreed that based upon this Court's finding that Defendant, Victoria Lugo-Giampa is a vexatious litigant, the Defendant hereby is restrained and prohibited from filing any further motions and/or papers with the Court without first obtaining permission from the Court to file a motion and/or paper.

On 4/2/08, VICTORIA files her Notice of Appeal with the Nevada Supreme Court.

VICTORIA contends that a reasonable person would conclude that when Judge Pomrenze was presented with the

golden opportunity to right any wrongs, she instead refused, without citing any cases, statutes, or rules, yet makes erroneous findings of fact and conclusions of law and abuses her discretion in deeming VICTORIA a vexatious litigator. Judge Pomrenze steadfastly refused to make any short-term orders concerning the minor children. It was part and parcel of her calculated effort to refrain from enforcing any statutes or rules for as long as possible to deliberately and purposefully conspire with ATTORNEY DUCKWORTH to moot the issue of child custody and elude what she doubtlessly feared would be the adverse consequences of such an admission – that of willful misconduct, abuse of process, dilatory tactics of delay, and fraud upon the court committed by ATTORNEY DUCKWORTH and CHARLES in complicity with this Court. The record is replete with ATTORNEY DUCKWORTH'S and CHARLES' acts of unclean hands and bad faith deliberately meant to circumvent the terms of the Decree of Divorce and to interfere with the Court's ability to adjudicate the parties' dispute. This sequence of events makes it perfectly clear that Judge Pomrenze was far more concerned with giving ATTORNEY DUCKWORTH favoritism than with preserving any rights VICTORIA and her children may have had under Nevada State law. The fact of the matter is that Judge Pomrenze's conduct here caused real harm. It certainly harmed innocent children in not receiving an education from a traditional high school as previously ordered by this court and needed psychiatric intervention for Marco's diagnosis of ADHD, and it totally deprived VICTORIA of her fundamental right to parent her children and the children's right to be parented by their mother. Worse, it harmed public confidence in the fair administration of justice in the courts of this circuit.

VICTORIA contends that legal error can constitute misconduct if it involves bad faith, bias, abuse of authority, disregard for fundamental rights, and intentional disregard of the law or any purpose other than the faithful discharge of judicial duty. That newly discovered evidence is sufficient to cause a reasonable person to question Judge Sandra Pomrenze's impartiality and bias and that upon remand the case be assigned to a different judge.

VICTORIA further contends that clearly Judge Pomrenze commits misconduct that harms the integrity of the judicial process and results in a miscarriage of justice when she entered a pre-filing order with undue haste because such sanctions treads on VICTORIA'S procedural due process right of future access to the courts.

In addition, other courts have held that rearguing previously rejected issues is not sufficient evidence of bad faith or a tactic to harass the plaintiff. That the assessment of any sanctions must be directed against Attorney Duckworth and his client who comes to court with unclean hands for disobeying previous court orders for support arrearages and for leaving the parties' children alone without parental supervision. Lone Ranger Television, Inc., 740 F.2d at 726-27.

On 5/27/08, VICTORIA filed VICTORIA GIAMPA'S CIVIL PROPER PERSON APPEAL STATEMENT and VICTORIA GIAMPA'S MOTION *TO STAY ALL PROCEEDINGS* PENDING APPEAL PURSUANT TO NRCP 8.

On 6/6/08, ATTORNEY DUCKWORTH filed RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL.

On 7/8/08, VICTORIA filed with the Nevada Supreme Court NOTICE OF INTENT TO FILE EX PARTE EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AGAINST ATTORNEY BRYCE C. DUCKWORTH, ESQ., PURSUANT TO N.R.C.P. 64, E.D.C.R. 5.20 AND E.D.C.R. 2.26.

On 7/15/08, VICTORIA filed PETITION TO REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL.

VICTORIA visited the Nevada Supreme Court website on *July 5, 2005*, and was shocked to discover that ATTORNEY DUCKWORTH had leaked confidential information and violates the Nevada Revised Statutes when he posted a Press Release and application for the Commission on Judicial Selection, 8th District Family Court, Dept. D, on the Supreme Court of Nevada website for wide dissemination and unauthorized viewing to the public of the following:

Bryce Callow Duckworth

Las Vegas Attorney with Smith, Larson & Wixom Bryce Duckworth's Application

List by case name and date the five most significant cases (not including cases pending in which you have been involved and describe:

a. Case name and date
b. Court and presiding judge and counsel
c. the importance of each case to you and the impact of each case on you
d. your role in the case

Charles Frank Giampa v. Victoria Margaret Lugo Giampa Case No. D224029 (1998-2008)

This matter epitomizes the acrimony that accompany many divorce proceedings. The issues involved all aspects of family law, i.e. child custody evaluation, valuation and division of assets and debts, support fees and sanctions. Most recently, lengthy proceedings were conducted regarding the father's request to modify custody regarding the parties' two children. These recent proceedings spanned more than 2 years. The hearings oftentimes were contentious and required a heightened degree of patience. In retrospect it may have been easier for me simply to withdraw from the case and avoid the contentiousness of the proceedings. The case file includes multiple volumes of pleadings and papers filed with the Court. I was dedicated to represent my client notwithstanding the exhaustive proceedings before the District Court.

I served as counsel for Charles F. Giampa since the initiation of the divorce proceedings in 1998. My involvement as his attorney has included numerous appearances in court, including evidentiary proceedings.

My experience as a husband and a father are attributes that contribute to my handling of family law related issues. I am an active father who understands the importance and significance of parental involvement in a child's life. I have coached my children's soccer and little league baseball teams and I currently sponsor my daughter's T-ball baseball team. Again, I am better able to understand the needs and concerns of children and spouses as a result of my experience as a husband and a father.

VICTORIA sought the Commission on Judicial Selection's immediate intervention to stop ATTORNEY DUCKWORTH from disseminating such unauthorized confidential information. VICTORIA moves quickly in these proceedings and states that at the time ATTORNEY DUCKWORTH mailed his application into the Commission on Judicial Selection, Case No. 98D224029 is alive and still pending. VICTORIA further contends that NRAP 26 provides authority for this Honorable Court to grant her an Order Shortening Time to hear her Motion For a Temporary Restraining Order Against ATTORNEY DUCKWORTH to stop disclosure of such confidential information without seeking permission from the Court and without noticing VICTORIA.

VICTORIA also relied on NRAP 26(d) to shorten the time which states in pertinent part:

> (d) Time—Extension, Shortening. Except as otherwise provided in these rules, or when not otherwise controlled by statute, the time provided in any of these rules within which an act shall be done, may be extended or shortened by stipulation of the parties, or by order of the court or a justice thereof upon good cause shown. No stipulation extending time shall be effective unless approved by the court or a justice thereof; and such stipulations must be filed before expiration of the time period which is sought to be extended.

VICTORIA contends her procedural due process rights were violated when ATTORNEY DUCKWORTH deliberately and with malice raised the gag order without first providing her with reasonable notice that it was considering raising the order affecting her due process liberty and property interests, but no such notice was afforded here. Procedural due process ensures that the litigant is afforded reasonable notice of and an opportunity to oppose a restrictive order's issuance. VICTORIA seeks sanctions and contends that ATTORNEY DUCKWORTH, with malice, acts in bad faith and complete indifference to the Nevada Revised Statutes when he violates NRS 125.110(2) which states in pertinent part:

> NRS 125.110 What pleadings and papers open to public inspection; written request of party for sealing.
> 1. In any action for divorce, the following papers and pleadings in the action shall be open to public inspection in the clerk's office:
> (a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of

service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.
(b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.
2. All other papers, records, proceedings and evidence, including exhibits and transcript of the testimony, shall, upon the written request of either party to the action, filed with the clerk, be sealed and shall not be open to inspection except to the parties or their attorneys, or when required as evidence in another action or proceeding.

VICTORIA contends that NRS 125.110 must be strictly construed, and when a statute is clear on its face, the Courts will not look beyond the statute's plain language. NRS 125.110 plainly states that certain documents in divorce proceedings "shall upon the written request of either party to the action, filed with the clerk, be sealed and shall not be open to inspection except to the parties or their attorneys...". "Shall' is mandatory and does not denote judicial discretion." Under NRS 125.110, the district court has no discretion in divorce cases to seal pleadings, court findings, orders that resolve motions, or judgments. NRS 125.110(2) allows the court to seal documents in a divorce proceeding and only upon a party's written request. Here ATTORNEY DUCKWORTH requested that this Court seal the entire case file, including all orders, judgments and decrees.

VICTORIA also relies on E.D.C.R. 5.20 - Preliminary injunctions and temporary restraining orders which states in pertinent part:

> (c) A motion for a temporary restraining order or preliminary injunction must be supported by an affidavit upon personal knowledge setting forth in detail the facts in justification of such relief.
> (d) Ex parte motions for restraining orders granting temporary relief on matters involving property, custody, visitation and support of children, spousal support or any other issue not governed by Rule 5.21, 5.22 or 5.85 will be considered only in cases of extreme emergency.
> (e) Ex parte motions must be supported by an affidavit upon personal knowledge describing in detail the facts constituting the urgency and a certification in writing by the moving parties' attorney of the efforts, if any, which have been made to give notice to the adverse party and the reasons supporting the claim that notice should not be required.
> (g) In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order.

(h) On 10 days' notice to the party who obtained the temporary restraining order, without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move for its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.
(i) Form and scope of injunction or restraining order:
(1) Every order granting an injunction and every restraining order shall set forth with specificity the reasons for its issuance, and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. The order is binding on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
(2) No temporary restraining order may be granted unless coupled with an order fixing the time for hearing a motion for preliminary injunction.
(3) Orders granting a preliminary injunction or temporary restraining orders must fix the time within which the restraining order, if any, and all pleadings, affidavits and briefs in support of the restraining order and the motion for preliminary injunction must be served on the adverse party, and the time for filing of the adverse party's opposition, counter-affidavits and briefs.

VICTORIA contends that ATTORNEY DUCKWORTH seeks to be selected by the Commission on Judicial Selection for

the prestigious position of a Family Court District Judge, and yet in the same breadth he violates the very same Judicial Canons which he will swear to under oath to uphold which states in pertinent part:

> A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
>
> A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
>
> ***Commentary Canon 2A***
>
> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Sections 3(B)(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.
> The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although

not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. See also Commentary under Section 2C.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

VICTORIA contends that Courts have previously ruled that there are stronger reasons to deny public access to judicial records concerning private matters when public access "could only serve to satiate a thirst for scandal"); State v. Grimes, 29 Nev. 50, 81, 84 P. 1061, 1071 (1906). VICTORIA contends that Courts have recognized that "no legitimate purpose can be served by broadcasting the intimate details of a soured marital relationship," however, good cause must be shown before a proceeding can be closed, Katz v. Katz, 514 A.2d 1374, 1379 (Pa. Super. Ct. 1986).

On 7/16/08, VICTORIA emailed Joyce Woodhouse, Nevada Legislator, District No. 5, seeking her assistance in

challenging the constitutionality of the Best Interest of the Children standard.

On 7/18/08, VICTORIA filed an Ethics Complaint against Attorney Duckworth with the State Bar of Nevada and enclosed as exhibits NOTICE OF INTENT TO FILE EX PARTE EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AGAINST ATTORNEY BRYCE C. DUCKWORTH, ESQ. PURSUANT TO N.R.C.P. 64, E.D.C.R. 5.20 AND E.D.C.R. 2.26 and PETITION TO REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL.

On 7/23/08, VICTORIA sought permission from Judge Pomrenze to file a Motion to seek a final order and hand delivered it to Judge Pomrenze's legal assistant Stephanie.

On 7/24/08, Judge Pomrenze returned by U.S. Mail VICTORIA'S Motion with the following note from Judge Pomrenze's legal assistant, Stephanie:

> *Please file an Ex Parte Motion seeking leave of the court to file the motion.*
>
> *Please also submit a proposed Order granting the ex parte motion for the judge to sign in the event that she grants the request.*

On 8/18/08, VICTORIA hand delivered her Ex Parte Motion to Judge Pomrenze's office.

On 8/25/08, VICTORIA spoke to Jen and asked her if Judge Pomrenze had given VICTORIA permission to file her Motion. Jen told VICTORIA to call back tomorrow.

On 8/27/08, VICTORIA spoke to Jen and asked her if Judge Pomrenze had given VICTORIA permission to file her Motion, and told VICTORIA to call tomorrow.

On 8/28/08, VICTORIA left a message with Jen and asked her if Judge Pomrenze had given VICTORIA permission to file her Motion.

On 8/29/08, VICTORIA spoke to Jen and told VICTORIA that the Judge was not in yesterday and will sit down with her today; call back this afternoon.

On 9/2/08, VICTORIA left message with Jen and ask her if Judge Pomrenze had given VICTORIA permission to file her Motion.

On 9/3/08, VICTORIA spoke to Jen and she told VICTORIA that per judge's discretion, with no reason, Judge Pomrenze did not grant permission for VICTORIA to file her Motion

CONCLUSION

Accordingly, VICTORIA, has been diligent in attempting to seek permission from Judge Pomrenze to file her motion for the purpose of securing a final order pursuant to NRCP 60(b) and the Nevada Supreme Court January 25, 2008 Decision, and has satisfied all the

requirements and conditions to obtain an issuance of a Writ of Mandamus or in the alternative a Writ of Prohibition.

ORDERS OF THE RECORD ESSENTIAL TO PETITIONER VICTORIA GIAMPA 'S PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE, A WRIT OF PROHIBITION

WHEREFORE, PETITIONER VICTORIA prays that this Court:

1. issue a Writ of Mandamus commanding Family Court on or before October 15, 2008 to allow PETITIONER VICTORIA to file her motion to seek a final order pursuant to NRCP 60(b) and pursuant to the Nevada Supreme Court January 25, 2008 Decision;

2. issue a Writ of Prohibition prohibiting JUDGE SANDRA L. POMRENZE on or before October 15, 2008 from enforcing a vexatious litigant order and threatening sanctions against PETITIONER VICTORIA based on the above facts;

3. transfer PETITIONER VICTORIA'S case to another available District Court Judge;

4. award PETITIONER VICTORIA compensatory damages in a sum yet to be determined;

5. award PETITIONER VICTORIA reasonable costs and expense of this proceeding;

6. grant PETITIONER VICTORIA such other and further relief as the Court deems proper.

DATED this 12th day of SEPTEMBER, 2008.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Proper Person

CERTIFICATE OF MAILING OF PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION

I, Victoria Giampa, hereby certify that on the 12th day of September, 2008, I personally placed in the U.S. Mail, postage prepaid, **PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION**, to the following:

Bryce C. Duckworth, Esq.
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorney for Charles Giampa

VICTORIA GIAMPA
Petitioner in Proper Person

September 3, 2008 emailed to Joyce Woodhouse, Nevada Legislature

SUPPLEMENTAL TO THE BEST INTEREST OF THE CHILDREN STANDARD

VICTORIA contends that an exception to the mootness doctrine is that the public-interest exception allows appellate review of an issue of considerable public importance if that issue is capable of repetition between either the same parties or other members of the public, for some reason evades appellate review. VICTORIA argues that in 2005, the Family Law Section of the State Bar of Nevada filed amicus curiae briefs for the Court's participation in the determination of joint physical custody in the case of Potter v. Potter, 121 Nev. 613, 119 P.3d 1246. The Family Law Section requested that the Court address the following with regard to joint physical custody:

1.) the definition of joint physical custody;
2.) whether joint physical custody for the purposes of NRS 125C.200 has to be equal;
3.) whether a specific time share constitutes joint physical custody, and
4.) whether joint physical custody is defined by the courts or by the parties.

VICTORIA further contends that on June 20, 2007, the Nevada Supreme Court in Ellis v. Carucci, 123 Nev. Adv. Op.No. 18 overruled Murphy, where it concluded that "change of custody is warranted only when: 1.) the

circumstances of the parents have been materially altered; and 2.) the child's welfare would be substantially enhanced by the change." The Court "overruled Murphy to the extent that it required a change in the circumstances of the parents alone without regard to a change in the circumstances of the child or the family unit as a whole. It also concluded that "the modification serves Geena's best interest by allowing her father more time to be involved in her education." VICTORIA contends that in this case the court granted Carucci's motion to modify primary physical custody and determined that joint physical custody was in the child's best interest. VICTORIA challenges the Court's determination that "joint physical custody" was in the child's best interest because the Court by this time, 2007, still had not yet defined the term "joint custody" and it violated the parties' procedural due process rights in that it failed to give notice nor the opportunity to be heard pursuant to NRS 125.490 which states in pertinent part:

> 1. There is a presumption, affecting the burden of proof that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.
> 2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.
> 3. For assistance in making a determination whether an award of joint custody is appropriate, the court *may* direct that an investigation be conducted.

VICTORIA also contends that an exception to the mootness doctrine is fraud upon the Court. ATTORNEY DUCKWORTH'S fraud upon the court is when he sought to structure the style of his motions in such a way so as to avoid this Court making an evaluation on its own unique facts and determination of a change of custody on a ***case by case basis***. Felix v. State, 109 Nev. 151, 173, 849 P.2d 220, 235 (1993). VICTORIA argues that this Court deliberately failed to determine a change of custody on a case by case basis when, on *April 26, 2005*, it issued the previous Order:

> *Regarding Defendant's request regarding Order Shortening Times, Court Noted, OST'S are considered on a* ***case by case, issue by issue basis****. Defendant received one judicial days' notice and the Court Finds that the OST was properly issued."*

VICTORIA argues that the newly discovered evidence is that Judge Sanchez willfully commits misconduct and abuses its discretion when it favors ATTORNEY DUCKWORTH and allows him to further abuse the process by allowing him to file a *contaminated* Motion for a Change of Custody of Marco when he violated EDCR 5.12(a) and fraudulently combine it with filing a second Motion for a change of Custody of Sarah. VICTORIA further argues that Judge Sanchez commits willful misconduct when she first fails to independently resolve the 1st change of custody proceedings of Marco on its *own unique merits* before proceeding to deliberate and resolve the 2nd change of custody proceedings of Sarah on its own unique merits. VICTORIA further argues that this Court abuses its

discretion since the Nevada District Court has previously recognized that the basic underlying policy is to have each case decided on its merits and as such, its determinations must be set aside. Tahoe Village Realty v. DeSmet, 95 Nev. 131, 134, 590 P.2d 1158, 1161 (1979). VICTORIA further contends that Nevada judicial policy favors a decision on the merits and heightens in domestic relations matters. Dagher v. Dagher, 103 Nev. 26, 28, 731 P.21 1329, 1330 (1987).

VICTORIA contends that because Judge Sanchez failed to make separate Findings of Fact and Conclusions of Law on the merits in the 1st change of custody proceedings of Marco, that ATTORNEY DUCKWORTH'S second Motion to Modify Custody of Sarah filed on *July 19, 2005* must fail and is also void. VICTORIA further contends that generally the Court recognize that acts made in violation of statutory authority are void, Ham v. District Court, 93 Nev. 409, 416, 566 P.2d 420, 424 (1977). Here, the Court did not provide VICTORIA with the opportunity to be heard independently after ATTORNEY DUCKWORTH filed Findings of Fact and Conclusions of Law on the 1st change of custody proceedings of Marco. VICTORIA contends that this is particularly troubling given that this Court made *combined* Findings of Fact and Conclusions of Law based on contaminated change of custody proceedings of Marco, that VICTORIA reasons that she would have prevailed also on the 2nd change of custody proceedings of Sarah solely on Dr. Mortiliaro's written evaluation of the parties.
VICTORIA contends that the Courts have recognized that fraud occurs when a party makes a false representation,

knowing it to be false, with the intent to deceive another, and the other relies on the representation, with resulting damage. Moreover, this Court prejudiced and deprived VICTORIA the opportunity to challenge CHARLES' statements that he was living with the children at the Country Club Towers, and denied her bringing forth evidence of the only psychiatrist who was Court Ordered to evaluate the parties before the evidentiary hearing. Instead, ATTORNEY DUCKWORTH'S gross negligence, bad faith, and willful misconduct in contacting, citing and quoting directly from (2) psychiatrists not previously ordered by this Court went totally against Dr. Mortillaro's evaluation that these children were not to live alone without supervision. VICTORIA further argues that ATTORNEY DUCKWORTH'S misconduct to use two psychiatrists' evaluations not previously ordered by this Court combined with his failure to present Dr. Mortillaro as a trial witness does not excuse ATTORNEY DUCKWORTH'S gross negligence since his client has the burden to show a change in substantial circumstances. VICTORIA contends that this alone constitutes error and misconduct on Judge Sanchez' part.

The evaluation reports ATTORNEY DUCKWORTH fraudulently presented relating to MARCO did not shed light on any plan or guidelines to help Marco with his ADHD but tended rather to paint VICTORIA as a problem.

VICTORIA also contends that the Nevada Courts holds that there is no time limit for motions to set aside void

judgments and also has stated that, "[i]f a judgment is void, a motion to set it aside may be brought at any time" pursuant to 60(b).

In addition, that pursuant to 60(b) VICTORIA seeks to set aside a void judgment for defective service since ATTORNEY DUCKWORTH contaminated the 2nd change of custody proceedings of Sarah with the 1st change of custody proceedings of Marco by violating EDCR 512(a).

VICTORIA further argues that this Court deliberately and purposely deprived VICTORIA and her children due process which the United States Supreme Court requires: "...notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" *separately*, Peralta v. Heights Medical Center, Inc. (1988) 485 U.S. 80, 84-85. VICTORIA contends that the United States Supreme Court concluded: "Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, 'it is no answer to say that in this particular case due process of law would have led to the same result because he had no adequate defense upon the merits."

VICTORIA contends that at this time ATTORNEY DUCKWORTH requests a psychiatric evaluation of the parties. VICTORIA would point out that CHARLES had previously requested her to attend an evaluation session with Dr. McCosh six (6) months prior to the Court Ordering a psychiatric evaluation in clear violation of EDCR 5.12(a). Clearly, CHARLES tries to entrap VICTORIA to get pre-evaluated prior to Judge Sanchez issuing any Court Order

for a psychiatric evaluation of the parties. Judge Sanchez Orders as follows:

Parties stipulated that MARCO will conclude the school year out at the Academy for Individualized Study, then attend summer school and then start Christian School at one of the three schools that will accept him beginning in the fall. Court so Ordered.
Mr. Duckworth and Defendant stipulated to 4 hours each for a total of 8 hours for the Evidentiary Hearing. Court so Ordered.

Mr. Duckworth. requested a psychiatric evaluation on Defendant and Plaintiff is willing to participate as well. Court provided both sides of the case with a copy of the Court's referral list of Court approved doctors. After further discussion, parties stipulated to a custody evaluation and a psychiatric evaluation and the parties will split the costs. Court so Ordered. Further, the evaluator is to be someone on the Court's referral list. After a discussion what doctors the parties did not wish to use, 3 names were left: Dr. Lyons, Dr. Lenkeit and Dr. Margolis. Plaintiff (sic) requested she be allowed to do some research on another therapist and provide their CV. Mr. Duckworth stated Plaintiff will not stipulate to or pay for anyone outside the Court's provider list. Court ADVISED Defendant may research it and submit a name to Mr. Duckworth of a therapist she prefers, however, if the parties do not stipulate on the evaluator, parties are to send the Court a letter and the Court will choose the therapist.
Argument regarding all other issues.
Court Ordered, Defendant's Motion for Mediation is ***MOOT*** *by virtue of the evaluation referral.*
Defendant's request to modify the Parenting Agreement is DEFERRED until the Evidentiary Hearing.
Defendant's request to correct the minute order from the March 9, 2005 hearing is MOOT.

Defendant's request for Family Mediation Center to conduct an investigation is DENIED and it is also rendered MOOT because the parties will have a custody evaluation and a psychiatric valuation with an evaluator.

VICTORIA challenges the constitutionality of the statute and argues that this Court abused its discretion when it Ordered a psychiatric evaluation of the parties. The parties had stipulated twice that VICTORIA had primary custody of the parties children memorialized in the Divorce Decree and Findings of Fact and Conclusions of Law thereby giving undue weight to the need for a psychiatric evaluation that was not initially defined [joint custody] but instead focused on the possibility that the parties must have psychological problems and the need for further psychiatric evaluation. VICTORIA contends that the NRS 125.480 is geared toward protecting the best interests of the children rather than evaluating parents' psychological problems and thereby controlling their behavior. VICTORIA further contends that the well-being of the children, not the conduct of the parent who had primary custody, is the focus of the statute, and that no specific conduct is prohibited. VICTORIA contends that "This court has made it clear that a court may not use changes of custody as a sword to punish parental misconduct; disobedience of court orders is punishable in other ways." Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

VICTORIA challenges the constitutionality of the statutes and argues that this Court blatantly ignored the children's immediate need for independent mediation into issues of the

children's education and welfare and violated one of the statute's procedural requirements. This is a situation where the Court had information in its records from the educators which, if acted upon quickly, would have changed the educational approach used for Marco and Sarah much quicker increasing the amount of individualized tutoring and possibly beginning a remedial program much sooner. VICTORIA contends that this is a particularly troubling violation no one will ever know the extent to which this failure to act upon early intervention of the possibility of ADHD has seriously impaired Marco's ability to fully develop the skills to receive an education. Had the Court issued an Order for a psychiatrist to conduct an independent evaluation of Marco immediately [since CHARLES had first filed for a change of custody of Marco] these procedural violations, which prevented VICTORIA from learning critical medical information about Marco's ADHD rendered Dr. Mortillaro's recommendations and goals impossible. VICTORIA contends that had the parties received mediation first, it might have been tailored to the unique needs of each individual child since each child has different needs, different skills and a different time frame for effective counseling, tutoring and/or effective treatment. VICTORIA contends that this Court failing to include her in mediation to determine Marco's immediate need for counseling, tutoring and guidance in his education, prevented VICTORIA'S full and effective parental participation and guidance and violated constitutional procedural requirements. Town of Burlington v. Dept. of Educ., 736 F.2d 773, 783 (1st Cir. 1984). VICTORIA argues

that this Court's denial of arbitration at this juncture was critically important because it pit the children against VICTORIA in an adversarial position and now made this child custody case fault-based. By this Court denying VICTORIA mediation, this Court failed to protect the procedural rights of the children and parents which resulted in the children's loss of educational opportunities and seriously infringed upon VICTORIA'S opportunity to participate and guide her children in these same opportunities.

VICTORIA contends that an exception to the mootness doctrine is a violation of procedural due process. Judge Sanchez acts in bad faith and willful misconduct when she deliberately and with complete indifference disrupts the spirit of stability and continuity in Victoria's home and in the children's lives and disrupts the spirit of the agreement the parties reached embodied in the Stipulation and Agreement and Parenting Plan. Judge Sanchez was fully aware and deliberately commits willful misconduct when allowing ATTORNEY DUCKWORTH and CHARLES to file a motion on a parent/child issue when they had yet not first filed for mediation. VICTORIA challenges this Court's arbitrary and capricious discretion to moot mediation for the parties' children since early detection, early parental involvement, and early intervention into issues of their education and welfare was critical to the parties' children's ability to overcome any problems they might have had. This Court's failure to Order independent mediation for both children separately and to obtain an independent

evaluation into issues of the children's education and welfare violated the procedural due process rights of the best interests of the children standard and the presumption that joint custody would be in the best interest of the minor children.

VICTORIA challenges the constitutionality of the statute and argues that this Court's Order "*Defendant's request for Family Mediation Center to conduct an investigation is DENIED and it is also rendered MOOT...*" is directly against the best interest of the children standard pursuant to NRS 125.490 in that this Court would have no basis to award joint physical custody if it did not conduct an individualized investigation first to determine that Marco was living alone without parental supervision at the Country Club Towers; nor no basis to award joint legal custody if it did not conduct an individualized investigation to determine that Sarah was also living alone at the Country Club Towers. VICTORIA argues that the necessity of holding an individualized investigation prior to making a determination of a change of custody of Marco follows logically from the basic legal tenets of our justice system of due process of law. VICTORIA argues that the due process clause of the Constitution of the United States requires states to accord separate notice and an opportunity to be heard separately. VICTORIA argues that this Court violated a clearly established Nevada State law. VICTORIA further argues that Judge Sanchez' ruling that the parties have "joint custody" is an illusion. Neither party had "joint custody" since the children were living alone and

unsupervised without parental supervision at the Country Club Towers.

VICTORIA argues against this Court's custom, policies and pattern and practice that do not permit a separate determination on a case by case basis is bad policy. Statutory laws that protect the best interests of the minor children that do away with individualized investigations of the child and focus instead on early emancipation are also bad policy. VICTORIA further argues that due process clause of the Constitution of the State of Nevada requires a hearing before a child can be emancipated. VICTORIA argues that due process clause of the Constitution of the State of Nevada requires an individualized investigation before a child can be deprived of a relationship of love and duty in a family unit which is a liberty interest entitled to constitutional protection, Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed. 2d 599 (1982). VICTORIA further contends that the Supreme Court has repeatedly held that "some form of hearing is required before an individual is finally deprived of a property interest," and that a basic tenet of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed2d 18 (1976). This Court deliberately and with malice denied these children due process of law when it denied them individualized hearings based on individualized investigations prospectively and denied these children individualized hearings based on individualized

investigations retroactively and ultimately found them to be early emancipated.

VICTORIA argues that this Court dismisses Marco's interest in the accuracy of the Court's 1st determination since it failed to make an individual investigation and hearing and resulted in pitting this child directly against VICTORIA. VICTORIA argues that Marco has an interest in the outcome of his individualized investigation independent of that of VICTORIA and that SARAH has an interest in the outcome of her individualized investigation independent of that of both Marco and VICTORIA. The private interest at issue here is VICTORIA'S loss of her children - the loss of which has been held to constitute irreparable harm. To be sure, Marco and his parents share a vital interest in preventing an erroneous *termination* of their natural relationship.

VICTORIA further contends that when she tried *to protect her children*, the statute provides neither notice of the Court's intention to impose the sanctions allowed nor do they provide for mandatory individual investigation. And because the statute provides for no notice or mandatory individual investigation, the Court cannot determine actual malice on VICTORIA'S part and must instead be arbitrary and discriminatory in imposing excessive sanctions. The value of additional procedural safeguards is obvious. VICTORIA argues that this Court never afforded these children any procedural safeguards or protection and deliberately placed them in between a rock and a hard place. VICTORIA argues that to take such a highly

personal and fact-specific inquiry out of the hands of Family Court Judges violates procedural due process. Who in this case benefited from such a constitutionally offensive law? Certainly not the children who lost four years of their lives and the right to live with their mother.

VICTORIA further argues that this Court's deliberate failure to conduct an individualized investigation [pursuant to NRS 125.490, Joint Custody] prior to making an award of *joint physical* and *joint legal* custody in order to determine and verify the expenses CHARLES incurred at the Country Club Towers is bad policy and thereby rendering a reduction in child support obligations willful misconduct and an abuse of discretion. NRS 125.490 states in pertinent part:

> 1. There is a presumption, affecting the burden of proof that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.
> 2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.
> 3. For assistance in making a determination whether an award of joint custody is appropriate, the court ***may*** direct that an investigation be conducted.

VICTORIA also contends that the Nevada Legislature declares that pursuant to NRS 125.460 it is the policy of this State:

1. to ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage; and

2. to encourage such parents to share the rights and responsibilities of child rearing.

VICTORIA also contends that another exception to the mootness doctrine is a challenge on the constitutionality of the statute as a whole. VICTORIA argues that the statutory standard fails to channel the discretion of the Family Court Judge by specifying the factors on which it should rely in making its prediction because there are no procedural protections and because the ultimate decision is intrinsically arbitrary and uncontrolled. VICTORIA argues that it is quite distressing that this Court has the unbridled discretion to either refuse or agree to conduct an individualized investigation into matters paramount as to whether the minor children *were living alone without parental supervision* at the Country Club Towers before making a final determination that the parties have *joint legal* and/or *joint physical* custody pursuant to NRS 125.490. That it is quite disturbing that this Court has the unbridled discretion to either refuse or agree to conduct an individualized investigation into matters paramount as to whether the parties agreed to a parenting plan or visitation plan before making a final determination that the parties have *joint legal* and/or *joint physical* custody pursuant to NRS 125.490. In addition, VICTORIA argues that the parties had stipulated at the beginning of the divorce

pursuant to the final custody order that the instant matter was to be decided as an initial custody decision under the best interests of the child analysis. In addition, the parties stipulated on April 20, 1998, that "In the event that controversy arises, this Order of the Court shall remain in full force and effect, and *the parents are encouraged to resolve the controversy themselves or seek mediation prior to further hearings.*" On April 20, 1999, when Charles reduced custody of the minor children down from 3 weekends a month to 2 weekends a month, CHARLES again stipulated that VICTORIA retain primary custody.

VICTORIA further argues that Judge Sanchez purposefully and deliberately commits misconduct and abuses her discretion when she ignored the changed circumstances test which requires a *threshold showing of detriment* before a court may modify an existing final custody order that was previously based upon the child's best interest. The rule is based upon principles of res judicata. Burchard v. Garay (1986) 42 Cal. 3d 531, 535, 229 Cal.Rptr. 800, 724 P.2d 486. Judge Sanchez' deliberate and willful misconduct in failing to conduct an investigation interfered with the fulfillment of the children's need for the guidance and love of both parents and as a result had a serious effect on the welfare of the children in virtually removing VICTORIA from her children's lives. Kahn v. Kahn, 252 A.2d 901 (D.C. 1969).

ATTORNEY DUCKWORTH'S fraud upon the court is when he *sought to structure the style* of his motions in such a way so as to avoid this Court making an evaluation on its own unique facts and determination of a change of custody on a

case by case basis. Felix v. State, 109 Nev. 151, 173, 849 P.2d 220, 235 (1993). VICTORIA argues that the neglect of ATTORNEY DUCKWORTH is not excusable under Rule 60(b) because of a pattern of malice and gross negligence from the outset of this case, and that a due process problem arose and resulted from an inconspicuous and unclear notification which affected the outcome in this case similar to Pioneer Inv. Svcs. Co. v. Brunswick Assoc. Ltd. P'ship, 507 U.S. 380, 395 (1993).

VICTORIA contends that another exception to the mootness doctrine is further fraud upon the Court. In the change of custody proceedings of Marco, ATTORNEY DUCKWORTH states that it was Marco's *preference* that he wants to live with his father. In strict violation of the EDCR 5.12(a), ATTORNEY DUCKWORTH obtains Dr. McCosh's and Dr. Gruner's psychological evaluations of Marco prior to Judge Sanchez ever issuing an Order that a psychiatrist conduct a psychological evaluation of the parties and he cites and quotes directly from its contents in strict violation of EDCR 5.12(a). VICTORIA argues that ATTORNEY DUCKWORTH'S preparation of and participation in the concealment of the (2) psychological evaluations violates the Rules of Professional Conduct. "Because the courts of this state must rely upon the assistance of attorneys to ascertain the truth of matters before them, attorneys must be fair and forthright with the courts." Matter of Discipline of Mines, 523 N.W.2d 424, 426 (S.D. 1994). The Courts have further ruled that "it is professional misconduct for a lawyer to

engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Mines, 523 N.W.2d at 426.

VICTORIA contends that another exception to the mootness doctrine is further fraud upon the Court. VICTORIA argues that the change of custody proceedings of Marco is invalid due to myriad substantive and procedural defects. This Court failed to evaluate Marco's change of child custody proceedings on its own unique facts and on a *case by case basis and unlawfully combined the contaminated change of custody proceedings of Marco with the change of custody proceedings of Sarah.* VICTORIA contends that in Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978), this court stated: "It is our underlying policy to have each case decided upon its merits." VICTORIA argues that the district courts have the inherent power to set aside judgments procured by extrinsic fraud. Lauer v. District Court, 62 Nev. 78, 140 P.2d 953.

VICTORIA argues that CHARLES is subject to Court Order(s) to inform VICTORIA when he left the jurisdiction leaving the children alone and without parental supervision and consequently this Court ignores the importance of NRS 125.480(4), "[i]n determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things...(g) the physical, developmental and emotional needs of the child." In addition, CHARLES' affidavit constitutes substantial evidence in support of a change of custody which VICTORIA reasons and demonstrates her conviction that a modification

of child custody should never have been ordered in the first place. VICTORIA argues that CHARLES leaving Marco alone and without parental supervision at the Country Club Towers should have triggered the Court to conduct an individual investigation pursuant to NRS 125.490(3) which states as followed:

> 3. For assistance in making a determination whether an award of joint custody is appropriate, the court ***may*** direct that an investigation be conducted.

In addition, had this Court conducted an individual investigation and interviewed Sarah, her statements would have been adverse to CHARLES' and ATTORNEY DUCKWORTH'S representations that CHARLES was living solely with the children at the apartment at the Country Club Towers and her statements would have influenced this Court's decision.

VICTORIA challenges the constitutionality of NRS 125.490, Joint Custody in that the cases fail to give a single, well-defined definition for the terms joint legal custody and joint physical custody. VICTORIA contends that a reasonable person would question how this Court will go about applying the best interest of the children standard without first defining 'joint legal' or 'joint physical' custody. The common dictionary definition of joint custody is broad enough to include anyone who is sharing with another or others.

1. There is a presumption, affecting the burden of proof that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.
2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.
3. For assistance in making a determination whether an award of joint custody is appropriate, the court ***may*** direct that an investigation be conducted.

VICTORIA challenges the statute's constitutionality of NRS 125.490 in that it "lacks specific standards, thereby encouraging, authorizing, and even failing to prevent arbitrary and discriminatory enforcement." VICTORIA further argues that the concern under this vagueness test is the scope of discretion left to Judges. VICTORIA'S fear is that absent adequate guidelines, this statute permits a standardless sweep and allows Judges to pursue their own personal predilections.

From April 30, 2005 to May 1, 2005, although CHARLES rent was ongoing at the Country Club Towers, to keep up his deception, he still took the minor children to gaming casinos/hotels and placing the minor children at a greater physical risk of harm and allowing them to aimlessly hang out alone and without parental supervision.

July 16, 2008

FROM: Victoria Giampa
1848 Wellington Court
Henderson, NV 89014
(702) 434-9027
superjanedoe@yahoo.com

TO: Joyce Woodhouse District 5
Jwoodhouse642@yahoo.com

ISSUE: Challenge to the Nevada Revised Statutes
Best Interests of the Children Statute

CONFIDENTIAL INFORMATION NOT FOR DISSEMMINATION TO THE GENERAL PUBLIC

QUESTION TO THE STATE OF NEVADA LEGISLATURE:

WHETHER OR NOT PRESUMED "FIT" PARENTS SHOULD BE WELL-DEFINED IN A SEPARATE CATEGORY 'SHARED CUSTODY' AND OMITTED UNDER THE BEST INTERESTS OF THE CHILDREN STATUTE NRS 125.480 AND EXEMPT FROM THE FOLLOWING:

1. preparing for or participating in an evidentiary hearing to determine "fitness" when the parties had previously stipulated to who should be awarded primary physical custody;

2. standing under the same umbrella with other parents who are presumed to have physically or emotionally or sexually abused or abandoned their minor children;
3. participating in a psychological evaluation.

NOTE: THE COURT COULD IMPOSE SANCTIONS IF THE FOLLOWING IS LEAKED TO THE GENERAL PUBLIC AND/OR THE LEGISLATURE.

Ms. Woodhouse, my particular case is "under seal" and gag order and all confidential information is prohibited from wide dissemination and viewing from the public or from disclosure of any confidential information. Following is a *synopsis* from a motion submitted to Family Court and concerns the pertinent part of my constitutional challenge. If it is at all possible, I would prefer that the synopsis not be included as part of the Question.

VICTORIA argues that in 2005, the Family Law Section of the State Bar of Nevada filed amicus curiae briefs for the Court's participation in the determination of joint physical custody in the case of Potter v. Potter, 121 Nev. 613, 119 P.3d 1246. The Family Law Section requested that the Court address the following with regard to joint physical custody:

1.) the definition of joint physical custody;
2.) whether joint physical custody for the purposes of NRS 125C.200 has to be equal;
3.) whether a specific time share constitutes joint physical custody, and

4.) whether joint physical custody is defined by the courts or by the parties.

VICTORIA argues that because the Nevada Legislature failed to address and define joint physical custody by the time Judge Sanchez awarded joint physical custody to both parties in this case, it infringed on VICTORIA'S *substantive* constitutional rights and totally deprived her of a fundamental right to a parent-child relationship of her two children. VICTORIA also contends that when interpreting a statute, any doubt as to legislative intent must be resolved in favor of what is reasonable, and against what is unreasonable, so as to avoid absurd results. Cragun v. Nevada Pub. Employees' Ret. Bd., 92 Nev. 202, 205, 547 P.2d 1356, 1358 (1976).

VICTORIA also challenges the constitutionality of the best interest of the children statute and argues that Nevada Revised Statute is void for vagueness because it fails to define "joint custody." VICTORIA contends that the Nevada Courts have defined when a "statute is void for vagueness if "...a person of ordinary intelligence cannot understand what conduct is prohibited and is predicated upon its repugnancy to the due process clause of the Fourteenth Amendment..." in that it encourages arbitrary and discriminatory enforcement. VICTORIA challenges the constitutionality of the best interest of the children statute and argues that an award of "joint custody" is unconstitutional when the legislature and the courts had not yet defined what "joint custody" is in that persons of ordinary intelligence have a vague understanding of NRS 125.480 which states in pertinent part:

1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that **joint custody** would be in the best interest of the child, the court may grant custody to the parties jointly.
2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.
3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:
(a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding **joint custody** of a child after either parent has applied for **joint custody**, the court shall state in its decision the reason for its denial of the parent's application.
(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.
(c) To any person related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.
(d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

VICTORIA further challenges the constitutionality of the best interest of the children statute and argues that NRS 125.480 is also void for vagueness because it goes against the policy of preserving the sanctity of "...a parent's interests in the nurture, upbringing, companionship, care, and custody of children which are generally protected by the

Due Process Clause of the Fourteenth Amendment." The Supreme Court of the United States acknowledges in Meyer v. Nebraska, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), "the right of parents to "bring up children," 262 U.S., at 399, 43 S.Ct. 625, and to control the education of their own" is protected by the Constitution, id., at 401, 43 S.Ct. 625. VICTORIA further challenges the constitutionality of the best interest of the children statute and argues that this Court failed to consider some of the other relevant factors other jurisdictions have found to be relevant in determining whether to grant joint physical custody to the parties, Taylor, 306 Md. 290, 508 A.2d 964: 1.) the willingness of parents to share custody; 2.) the potential disruption of the child's social and school life; 3.) the geographic proximity of the parental homes; 4.) the demands of parental employment; and 5.) the sincerity of the parents' request.

VICTORIA contends that the Supreme Court of Washington invalidated its statute because it authorized a contested visitation order at the intrusive behest of any person at any time subject only to a best-interests-of-the child standard. In construing their statute, the state court explained that the "any person" at "any time" language was to be read literally, 137 Wash.2d at 10-11, 969 P.2d, at 25-27, and that "[m]ost notably the statute does not require the petitioner to establish that he or she has a substantial relationship with the child," id., at 20-21, 969 P.2d, at 31. Although the statute speaks of granting visitation rights whenever "visitation may serve the best interest of the child," Wash. Rev.Code § 26.10.160(3), the state court authoritatively read this provision as placing hardly any limit on a court's discretion to award visitation rights. As the court

understood it, the specific best-interests provision in the statute would allow a court to award visitation whenever it thought it could make a better decision than a child's parent had done.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that the Supreme Court of Nevada should invalidate this statute because it is also void for vagueness. VICTORIA contends that the following phrase is a non sequitur [the 2nd sentence does not logically follow the 1st]. *"In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly*. VICTORIA argues that if the Nevada Legislature had not yet defined what joint custody is, then the (2) sentences are incompatible with each other's principals and thus void for vagueness. It authorizes a contested custody order at the intrusive behest of the other party without defining "joint custody" subject only to a best-interests-of-the child standard. VICTORIA argues that in construing the statute, that the statute does not *mandate that an investigation be conducted* to establish that the parties meet all the factors in NRS 125.4804(a) through 4(j). Although the statute speaks of granting a modification of custody rights whenever custody may serve the best interest of the child, the Nevada State Court authoritatively reads this provision as placing hardly any limit on a court's discretion to an award of modification of joint custody rights. As the court understood it, the specific best-interests provision in the statute would allow a court to award a modification of joint custody whenever it thought it

could make a better decision than the children's parent had done by 1.) depriving the parents an opportunity to conduct an investigation, 2.) depriving the parents an opportunity to define what joint custody is, and 3.) depriving the parents an opportunity to agree to a parenting plan pursuant to Nevada Revised Statutes.

In addition, VICTORIA challenges and brings to the court's attention NRS 125.520 [Plan for carrying out court's order; access to child's records] which this Court again failed to implement and reads in pertinent part:

> 1. The court may, when appropriate, require the parents to submit to the court a plan for carrying out the court's order concerning custody.
> 2. Access to records and other information pertaining to a minor child, for example, medical, dental and school records, must not be denied to a parent for the reason that the parent is not the child's custodial parent.

VICTORIA further challenges and brings to the court's attention that reasonable "fit" parents would conclude that because the legislature failed to define "joint custody," this Court in actuality cannot implement nor Order any of its sub-parts without first defining what 'joint custody is." NRS 125.510 states in pertinent part: Court orders; modification or termination of orders; form for orders; court may order parent to post bond if parent resides in or has significant commitments in foreign country.

> 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:

> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and
> (b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties.
> □ The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable "fit" parents would have a difficult time understanding that their rights as joint custodians could be modified or terminated by the Court at any time – even though the legislature failed to give a well-defined definition for the term "joint custody."

> 2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that similarly, reasonable "fit" parents would have a difficult time understanding that their rights as joint custodians is broad enough to include anyone [and that includes sexual

predators and abusers] for any reason without clarifying whether that person is "fit" or "unfit" to be included in the vague definition of "joint custody."

> 3. Any order for custody of a minor child or children of a marriage entered by a court of another state may, subject to the jurisdictional requirements in chapter 125A of NRS, be modified at any time to an order of joint custody.
> 4. A party may proceed pursuant to this section without counsel.

VICTORIA further challenges the constitutionality of the best interest of the children statute and argues that the sole reason for keeping "fit" parents in the un-defined definition of "joint custody" is a presumption that they are employed, have an education, and have the finances to litigate for a change of custody for the attorneys' own fortune, enrichment and greed to the detriment of the family and the children. VICTORIA further reasons that a substitute for fault-based divorce is now fault-based child custody, pitting "fit" parents against each other and silently shifting the burden from a preponderance of evidence and applying an unevenhanded unspoken heavier burden of clear and convincing evidence. VICTORIA further reasons that the Nevada Legislature has authority to find that "fit" parents should be well-defined in the statute and should also be *exempt from*:

> 4. preparing for or participating in an evidentiary hearing to determine "fitness" when the parties had previously stipulated to who should be awarded primary physical custody;

5. standing under the same umbrella with other parents who are presumed to have physically or emotionally or sexually abused or abandoned their minor children;
6. participating in a psychological evaluation.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable "fit" parents would have a difficult time understanding that their rights as joint custodians could be deliberately ignored and modified or terminated by the Court at any time – even though the legislature failed to give a well-defined definition for the term "joint custody" and yet memorialize its un-defined definition in Findings of Facts and Conclusions of Law:

> 5. *Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.*

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable "fit" parents would have a difficult time understanding that their rights as joint custodians could be *limited* by the Court at any time – even though the legislature failed to give a well-defined definition for the term "joint custody" - and

memorialize its Findings of Facts and Conclusions of Law even though "fit" parents had *previously stipulated* 3 times and memorialized their agreement in a Parenting Plan that they retain rights as joint custodians:

> 6. All orders authorized by this section must be made in accordance with the provisions of chapter 125A of NRS and must contain the following language:
>
> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a *limited right of custody* to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable "fit" parents would have a difficult time understanding that a culture of indifference permeates Family Court against minor children age 15 and older and that this culture of indifference is perpetuated by this Family Court. That this Court could cut off a minor child's rights to be guided and nurtured by either parent and the child's rights could *cease* at any time before a minor child age 15 or older reaches the age of majority. VICTORIA contends that NRS 125.510

must be strictly construed, and when a statute is clear on its face, the Courts will not look beyond the statute's plain language which states in pertinent part:

> 9. Except where a contract providing otherwise has been executed pursuant to NRS 123.080, the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases:
> (a) Upon the death of the person to whom the order was directed; or
> *(b) When the child reaches 18 years of age if he is no longer enrolled in high school, otherwise, when he reaches 19 years of age.*

VICTORIA contends that the usual test to determine whether her procedural due process rights have been violated is set forth in Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), and the factors the United States Supreme Court considers are:

1. the private interest that will be affected by the official action;
2. the risk of an erroneous deprivation of the private interest through the procedures used; and the probable value, if any, of additional or substitute procedural safeguards; and
3. finally, the government's interest, including...the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that the parties did not agree to an award of joint custody and this court

failed to conduct a hearing for the purposes of determining the custody of the minor children; so consequently the parties failed to meet the 1st step in NRS 125.490:

> 1. There is a presumption, affecting the burden of proof that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that the parties did not agree to joint legal custody and this court failed to conduct a hearing for the purposes of determining the custody of the minor children; so the parties failed to meet the 2nd step in NRS 125.490:

> 2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that since the parties failed to meet the 1st and 2nd steps pursuant to NRS 125.490 that the parties' only recourse was the Court's enforcement of the last and final step and that is that an investigation be conducted for the purposes of assisting the parties in making a determination whether an award of joint custody is appropriate. VICTORIA contends that the statute is void for vagueness because it encourages the Court's arbitrary and discriminatory enforcement and it lacks specific language on what conduct is prohibited by the

parties. This Court failed to conduct an investigation 1.) into the party leaving the children alone without parental supervision; 2.) into the party parenting from his cell phone as evidenced by Sprint records; 3.) into Las Vegas Metropolitan Police Department well-checks; and 4.) into the party's lease agreement for an apartment leaving the minor children alone and unsupervised before making a determination as to whether to award joint custody and whether it is appropriate as provided for pursuant to NRS 125.490(3):

> 3. For assistance in making a determination whether an award of joint custody is appropriate, the court ***may*** direct that an investigation be conducted.

VICTORIA also argues that Judge Sanchez commits error by *applying* NRS 125.490 in a joint physical custody arrangement when the Nevada Legislature had not yet fully addressed the issue of defining joint physical custody. VICTORIA challenges the constitutionality of the best interest of the children statute and argues that the statute is void for vagueness when it fails to address the definition of joint custody, fails to make a distinction between sharing parental responsibility in major decision-making matters and sharing responsibility for providing a home for the children. VICTORIA argues that because Judge Sanchez failed to allow the parents to make their own parenting plan as a joint physical custody arrangement in light of the statutory definition of "joint custody," this Court deprived VICTORIA any significant period of time during which the children could possibly reside with or is under the care and supervision of each of the parents. VICTORIA challenges

the constitutionality of the best interest of the children statute and argues that the statute regarding "joint custody" is also too narrowly tailored so as to serve a compelling interest. In addition, Judge Sanchez fails to conduct a reasonableness test "which implicitly calibrates the level of scrutiny *in each custody proceeding case* to match the particular degree of intrusion on the parents' interests." David D. Meyer, Lochner Redeemed: Family Privacy After Troxel and Carhart, 48 UCLA L.Rev. 1125 (2001).

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that Judge Sanchez with deliberate indifference infringed on her *procedural due process rights* by depriving her of proper notice and the opportunity to be heard without issuing independent Findings of Facts and Conclusions of Law based on the factors outlined in NRS 125.490, Joint Custody and voids this Court's Order which states in pertinent part:

1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court ***at a hearing for the purpose of determining the custody of the minor child or children of the marriage***;
2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint custody;
3. For assistance in making a determination whether an award of joint custody is appropriate, *the court may direct that an investigation be conducted.*

VICTORIA also contends that due process requires proper "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 IU.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

IN THE SUPREME COURT OF THE STATE OF NEVADA

		Received Las Vegas Drop Box
VICTORIA GIAMPA,	)	Clerk of Supreme Court
	)	**July 15, 2008**
Petitioner,	)	District Court Case
	)	No: 98-D224029
	)	
vs.	)	Nevada Supreme Court
	)	No. 49500
	)	
CHARLES F. GIAMPA,	)	
	)	
	)	
Respondent.	)	
	)	
	)	

VICTORIA GIAMPA'S PETITION TO REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL

COMES NOW, PETITIONER VICTORIA GIAMPA, In Pro Se, who hereby brings her PETITION TO REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF

SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL.

DATED this 15th day of JULY, 2008.

By:

_____

Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Pro Se

VICTORIA RESPONDS AND REPLIES TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL

CHARLES' ALLEGATION NO. 1:

Her request to stay the proceedings, however, was denied by the District Court. Chuck requests that this Court deny Victoria's Motion.

VICTORIA'S RESPONSE NO. 1:

On November 19, 2007, VICTORIA styled her MOTION TO STAY *JUDGMENT* PENDING APPEAL in error; and states that Judge Sandra L. Pomrenze issued its Findings of Facts and Conclusions of Law based on an incorrect styled caption

and summarily denied VICTORIA'S MOTION TO STAY *JUDGMENT* PENDING APPEAL.

On *May 27, 2008*, VICTORIA filed VICTORIA GIAMPA'S CIVIL PROPER PERSON APPEAL STATEMENT and VICTORIA GIAMPA'S MOTION *TO STAY ALL PROCEEDINGS* PENDING APPEAL PURSUANT TO NRCP 8 which states in pertinent part:

> (a) Stay Must Ordinarily Be Sought in the First Instance in District Court; Motion for Stay in Supreme Court. Application for a stay of the Judgment or order of a district court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court. A motion for such relief may be made to the Supreme Court or to a justice thereof, but the motion shall show that application to the district court for the relief sought is not practicable, or that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by the court or a quorum thereof but in

> exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single justice of the court.
>
> (d) Stays in Civil Cases Involving Child Custody. In deciding whether to issue a stay in matters involving child custody, this court will consider the following factors: (1) whether the child(ren) will suffer hardship or harm if the stay is either granted or denied; (2) whether the nonmoving party will suffer hardship or harm if the stay is granted; (3) whether determination of other existing equitable considerations, if any, is warranted.

VICTORIA contends that this Motion for Reconsideration involves erroneous decisions by Judge Gloria Sanchez and Judge Sandra L. Pomrenze. VICTORIA contends that stays may be issued by the Court in its discretion and on such conditions of security as are proper. See NRCP 62(a). A stay is appropriate to preserve the status quo pending the appeal and to prevent this Court's jurisdiction from being rendered ineffective because no other relief is available. Hough v. Roberts Mining and Milling Co., 58 Nev. 317, 78 P.2d 102 (1938). The jurisdiction of the Court in the instant matter will be made ineffective if it cannot grant relief to VICTORIA and her children from the Order. VICTORIA further contends that because the mooting of her motion prevents her from seeking a determination that the Court's temporary order was incorrect on the merits, it would be inequitable to award fees to PLAINTIFF GIAMPA. State of Oregon, 326 Or. 531, 956 P.2d 177 (1998).

On *January 20, 2005*, ATTORNEY DUCKWORTH files MOTION TO MODIFY CUSTODY AND [MOTION TO] RESOLVE PARENT-CHILD ISSUES. VICTORIA argues that ATTORNEY DUCKWORTH'S unconscionable scheme is in the forefront. He has demonstrated his willingness to play fast and loose with the rules of the Court. He cites rules when they benefit him and conveniently ignores them when they do not. VICTORIA'S fears have turned into reality and ATTORNEY DUCKWORTH'S scheme is now written in stone. VICTORIA argues that ATTORNEY DUCKWORTH'S *MOTION FOR A CHANGE OF CUSTODY* demonstrates his [and CHARLES'] ulterior motive which is highly relevant to Judge Sanchez's determination of both MARCO and Sarah's change of primary custody and any imposition of massive sanctions against VICTORIA. VICTORIA further argues that the similarity of these facts necessary for the determination of first filing for an Emergency *Parent-Child Issue* and a *MOTION FOR A CHANGE OF CUSTODY* reveals that ATTORNEY DUCKWORTH'S and CHARLES' fraud upon the court stem from the same controversy between the parties.

VICTORIA challenges the constitutionality of the Eighth District Court Rules that are silent on the issue of mediation regarding immediate intervention on issues of the children's education, medical, psychological and welfare. VICTORIA argues that Judge Sanchez abuses her discretion when she violates the children's procedural due process rights in not allowing the parties mediation and subsequently allows ATTORNEY DUCKWORTH to exempt the *minor children* from seeking mediation prior to the Court issuing a modification of a change of custody. VICTORIA argues that assessing the children's best interest

surely falls within requesting or seeking mediation to resolve parent/child issues of their education, health and welfare. VICTORIA would further contend that Judge Sanchez is not without control over parental discretion in dealing with the minor children when their need for parental supervision is jeopardized. VICTORIA contends Judge Sanchez' serious misconduct has been clearly established by aiding ATTORNEY DUCKWORTH and his client when they all clearly ignored the troubling issues of the children's lack of parental supervision and lack of parental guidance in their education. The Supreme Court thinks otherwise and has stated that "A state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." Parham v. J.R., 442 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979). Generally, the Nevada Supreme Court has recognized that a stay should be granted where it is demonstrated that the appellant would suffer irreparable injury during the pendency of an appeal if a stay is not granted. The Court discussed this requirement in Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948), "As a rule a supersedeas or stay should be granted...whenever it appears that without it the object of the appeal or writ may be defeated, or that it is reasonably necessary to protect appellant or plaintiff in error from irreparable or serious injury in the case of reversal, and it does not appear that appellee or defendant in error will sustain irreparable or disproportionate injury in case of affirmance..." VICTORIA is frustrated that the parties' children were not required to receive mandated mediation on issues such as their health and education.

VICTORIA contends that generally the Nevada Supreme Court has recognized that a stay should be granted where it is demonstrated that the Appellant would suffer irreparable injury during the pendency of an appeal if a stay is not granted. VICTORIA is especially worried about the harm Marco and Sarah have suffered and who need immediate psychological counseling because they both suffer from depression. Sarah has recently been seen by a doctor who prescribed a mask to aid with her sleep disordered breathing. She has heart palpitations, constantly tires easily and sleeps all day. Unfortunately, CHARLES ignored Sarah's poor eating habits which has now resulted in obesity and sleep apnea. Just recently, Marco was stopped and ticketed by the Henderson Police for a DUI at 2:30 in the morning and is presently awaiting a hearing, drug test, psychological evaluation and a sentence. Both children are not employed nor are they attending college. CHARLES is so saturated by his guilt and shame and his resentment toward VICTORIA that it has blinded him to the fact that these children are growing up without any consequences and growing up without any discipline. CHARLES is essentially bailing them out and these children are suffering the consequences – obesity and acting out. VICTORIA further believes that immediate intervention of a psychiatric evaluation conducted by a court-appointed psychiatrist, counseling, and tutoring, and assistance in designing an intervention program to help the children reduce emotional barriers to their ability to learn is critical to the seriousness of her children's academic and immediate health problems. Equally so, VICTORIA reasons that Dr. Mortillaro who was trained in evaluating mental health could aid the children to establish an intervention program to identify and treat the children's barriers to

learning caused by this Court's failure to protect VICTORIA'S fundamental right in guiding and supervising the children's need for an education. VICTORIA further contends that the children's need for an immediate intervention for an effective education does not moot claims for monetary damages. The Court has ruled in Ceniceros v. Board of Trustees of the San Diego Unified Sch. Dist., 106 F.3d 878, 879 (9th Cir. 1997), that Ceniceros' only claim for monetary damages survives. In O'Neal v. City of Seattle, 66 F.3d 1064, 1066 (9th Cir. 1995), the Court has ruled that "O'Neal's claim for damages saves this case from a complete mootness bar."

VICTORIA further contends that the public interest exception allows appellate review of an issue of considerable public importance if that issue is capable of repetition between either the same parties or other members of the public, but for some reason evades appellate review. VICTORIA contends that the issue is whether the trial court abused its discretion in modifying custody, and challenges the constitutionality of the statutes and further argues that it was not in the children's best interest for this Court to award "joint physical custody" or "joint legal custody" to the parties when they had never previously agreed to such an award. VICTORIA contends that a reasonable person would question how this Court can arbitrarily go about awarding "joint physical" and "joint legal custody" without first defining for itself what the terms mean. VICTORIA argues that a reasonable parent would be surprised to learn that when a party files for a modification of a change of custody, this Court [with deliberate indifference as to whether the parent is "fit"] can make an award of "joint custody" which has a potential to

create a greater risk of harm to the children and a potential for a deprivation of visitation and a loss of custody. Unfortunately this Court's discretional decisions are immune in protecting children from being latchkey, from being left alone without parental supervision, from a lack of parental guidance in their education, and from becoming emancipated too young too soon. Regrettably and unfortunately, such attorney willful misconduct is also immune from the imposition of sanctions.

VICTORIA also contends that another exception to the mootness doctrine is a challenge on the constitutionality of the statute as a whole. VICTORIA argues that the statutory standard of joint custody fails to channel the discretion of the Family Court Judge by specifying the factors on which it should rely in making its prediction because there are no procedural protections and because the ultimate decision is intrinsically arbitrary and uncontrolled. VICTORIA argues that it is quite distressing that this Court has the unbridled discretion to either refuse or agree to conduct an individualized investigation into matters paramount as to whether the minor children <u>were living alone without parental supervision</u> at the Country Club Towers before making a determination that the parties have *joint legal* and/or *joint physical custody* pursuant to NRS 125.490. In addition, the parties stipulated on *April 20, 1998*, that "In the event that controversy arises, this Order of the Court shall remain in full force and effect, and *the parents are encouraged to resolve the controversy themselves or seek mediation prior to further hearings.*" On *April 20, 1999*, when Charles reduced his custody down from 3 weekends a month to 2 weekends a month, CHARLES again stipulated that VICTORIA retain primary custody.

VICTORIA contends that another exception to the mootness doctrine is further fraud upon the Court. VICTORIA argues that the change of custody of Marco is invalid due to myriad substantive and procedural defects. This Court failed to evaluate Marco's change of child custody proceedings on its own unique facts and on a *case by case basis and unlawfully combined the contaminated change of custody proceedings of Marco with the change of custody proceedings of Sarah.* VICTORIA contends that in Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978), this court stated: "It is our underlying policy to have each case decided upon its merits." VICTORIA argues that the district courts have the inherent power to set aside judgments procured by extrinsic fraud. Lauer v. District Court, 62 Nev. 78, 140 P.2d 953.

VICTORIA contends that the Courts have recognized that protecting the mental health of children falls well within the state's broad interest in education. Dr. Mortillaro's evaluation and purpose of the Court ordered evaluation is to assess the presence of psychological and social factors that influence future decisions to be made in the best interests of the children. VICTORIA contends that this evaluation and the information obtained will be used for educational purposes and how it will ultimately benefit the children now and in the future. The Courts have reasoned that education is perhaps the most important function of state and local governments. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional

training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he or she is denied the opportunity of an education. The Courts further reason that education is not merely about teaching the basics of reading, writing, and arithmetic. Education serves higher civic and social functions, including the rearing of children into healthy, productive, and responsible adults and the cultivation of talented and qualified leaders of diverse backgrounds. Grutter. v. Bollinger, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003). On *December 12, 2005*, Dr. Louis Mortillaro, Ph.D. made the following evaluation of the parties which states in pertinent part:

THE PURPOSE OF THE COURT ORDERED EVALUATION IS TO ASSESS THE PRESENCE OF PSYCHOLOGICAL AND SOCIAL FACTORS THAT INFLUENCE FUTURE DECISIONS TO BE MADE IN THE BEST INTERESTS OF THE CHILDREN. EVALUATION RESULTS INCLUDE DISCUSSION ABOUT PARENTING CAPACITY, KNOWLEDGE, SKILLS, ATTRIBUTES AND ABILITIES NECESSARY FOR APPROPRIATE PARENTING BEHAVIOR, PARENTAL PSYCHOLOGICAL FUNCTIONING, THE DEVELOPMENT NEEDS OF THE CHILDREN, ABILITY TO PLAN FOR THE CHILDREN'S FUTURE NEEDS, POTENTIAL FOR INAPPROPRIATE PARENTAL ALIENATION BEHAVIOR THAT MAY NEGATIVELY INFLUENCE THE CHILDREN, HOW PARENTAL WORK SCHEDULES INTERFERE WITH THE TIME SPENT WITH THE CHILD, CAPACITY FOR COPARENTING, THE CHILDREN'S SPECIAL NEEDS AND THE ABILITY OF THE PARENTS TO PROVIDE A STABLE AND

LOVING HOME ENVIRONMENT AND LIVING ARRANGEMENT WITH A MINIMUM OF FAMILY DISRUPTION.

VICTORIA further contends that Dr. Mortillaro's evaluation was to focus on the children's special needs and VICTORIA contends that would include improving the children's ability to learn. Further, Dr. Mortillaro's report was intended to assist in designing an intervention program to help the parents and reduce barriers to the children's ability to learn which was never implemented. Dr. Mortillaro further states:

THE CHILDREN ARE TO BE ENCOURAGED TO FINISH THEIR GIRL SCOUT AND BOY SCOUT ACTIVITIES. MARCO IS TO CONTINUE HIS ACADEMICS IN A TRADITIONAL HIGH SCHOOL UNTIL HE GRADUATES. SARAH SHOULD ALSO GO TO A TRADITIONAL HIGH SCHOOL WHERE SHE CAN COMPLETE HER COURSE WORK UNDER SUPERVISION AND GRADUATE. HOWEVER, A RECENT LETTER FROM HER TREATING PSYCHOLOGIST SUGGESTS SHE REMAIN IN THE INDEPENDENT STUDY SYSTEM AND IS TO COMPLETE HER HIGH SCHOOL GRADUATION REQUIREMENTS BECAUSE A SWITCH BACK TO THE TRADITIONAL HIGH SCHOOL SYSTEM WOULD TAKE HER LONGER TO COMPLETE HER CREDITS AND GRADUATE. APPARENTLY, IF SHE MAINTAINS HER PRESENT PACE, SHE CAN GRADUATE FROM HIGH SCHOOL BY MARCH OR APRIL 2006 AND QUALIFY FOR COLLEGE ENTRANCE.

VICTORIA further contends that Dr. Mortillaro's evaluation was intended to gauge the mental health of the children by identifying internal behaviors such as anxiety and depression and external behaviors such as aggression and acting out. Dr. Mortillaro further states:

BOTH CHILDREN HAVE PSYCHOLOGICAL PROBLEMS THAT ARE BEING CURRENTLY TREATED. BOTH HAVE DEFICITS IN SELF ESTEEM, AND SARAH APPEARS TO BE MORE DEPRESSED THAN MARCO. THE CHILDREN NEED TO CONTINUE WITH PSYCHOLOGICAL COUNSELLING, THE DURATION AND FREQUENCY OF WHICH SHALL BE DETERMINED BY THEIR TREATING THERAPIST.

PLAINTIFF'S ALLEGATION NO. 2:

Thus, Chuck further requests this Court to impose sanctions against Victoria in the form of an award of attorney's fees to reimburse Chuck for the fees and costs incurred in responding to her frivolous Motion.

VICTORIA'S RESPONSE NO. 2:

ATTORNEY DUCKWORTH deliberately misapplies NRAP 38 when he requests this Court to impose sanctions against VICTORIA. VICTORIA further argues that ATTORNEY DUCKWORTH'S request is a willful abuse of process solely meant to delay this case. VICTORIA argues that CHARLES' motion for an imposition of sanctions against VICTORIA is not only legally insufficient to sustain a viable objection but also manifestly absurd, ludicrous, and scandalous. There is absolutely no basis in fact or law that

this Court could find to determine to punish VICTORIA in any further proceedings in trying to protect her two minor children. VICTORIA contends that generally the attorney's neglect is imputed to his client, and that ATTORNEY DUCKWORTH'S client is held responsible for it and his recourse is an action for malpractice. Valeme v. First Western Savings & Loan, 90 Nev. 377, 528 P.2d 699 (1974).

PLAINTIFF'S ALLEGATION NO. 3:
This Court similarly should find Victoria to be a vexatious litigant in light of her multiple frivolous appeals, and the absurd and frivolous nature of her current Motion before this Honorable Court.

VICTORIA'S RESPONSE NO. 3:

VICTORIA argues that ATTORNEY DUCKWORTH disregards Judge Hardcastle's Order when she declares that VICTORIA is not a vexatious litigant and proceeds to file his motion requesting a different judge to declare VICTORIA a vexatious litigant under legal theories he thought would ultimately prevail. ATTORNEY DUCKWORTH'S attempt to avoid the consequences of its wrongful vexatious motion should fall victim to the principle of res judicata. VICTORIA argues that the doctrine of res judicata would preclude Judge Pomrenze from issuing an Order declaring VICTORIA a vexatious litigant.

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VICTORIA argues that Judge Pomrenze abuses her discretion in entering a pre-filing order against her and declaring her a vexatious litigant because her Order 1.) did not contain a list of the filings and rulings that led the court to impose its broad filing restriction; 2.) makes no

substantive findings as to the harassing nature of VICTORIA'S actions; 3.) and fails to set any standard against which a future court-access determination should be made. In addition, Judge Pomrenze makes the following erroneous statements..."*given the number of motions filed over the years and the number which have been found to be non-meritorious....*" VICTORIA argues that this Court improperly relies upon the filings before another judge which do not interfere with VICTORIA'S motions still pending before this Court.

VICTORIA further argues that Nevada does not have a court rule or statute authorizing Judge Pomrenze to declare VICTORIA a vexatious litigant and limit her access to the courts as a defendant defending an action for a custody matter for which she did not file. VICTORIA would concede that given the long history of this case, she has filed numerous motions, but not numerous complaints for divorce. That her past filings were not vexatious because they were not filed in bad faith in attempting to protect her children. That the number of motions filed by VICTORIA did not contain false or exaggerated allegations. That she brought forth substantial evidence substantiating her claims for CHARLES' contempt and for alleging his and ATTORNEY DUCKWORTH'S willful misconduct, gross negligence, abuse of process, fraud upon the court, and excessive delays resulting in prejudice. VICTORIA also contends that Judge Pomrenze has not ruled on VICTORIA'S pending motions seeking redress but instead - with complete indifference - interferes with her attempts to file legal documents which results in constitutional procedural and substantive violations and prejudices her right to future filings. VICTORIA contends that the

Court's have expressed their views that "An injunction...restricting an individual's access to the court system...is an extraordinary remedy that should be narrowly tailored and rarely used." De Long v. Hennessey, 9132 F.2d 114 (9th Cir. 1990).

On *February 11, 2004,* Judge Sanchez, made the following inopposite statements about VICTORIA'S ability to file motions which proves Judge Pomrenze of bias and prejudice when she deems VICTORIA a vexatious litigant as follows:

> *JUDGE SANCHEZ: ...and defendant may be very well meaning, and she certainly is a brilliant litigant from -- in comparison to the normal litigants who don't have counsel because she – she cites the case law. She's -- she's you know, she's someone you'd want to hire if you had that kind of case where there were so many complex issues to litigate because she's extremely thorough.*
>
> *JUDGE SANCHEZ: There's numerous citations to transcripts, a lot of research. I mean, I can't conceive -- it must take months to research that kind of a brief, to file a ninety-nine page brief with twenty-two issues for relief. And she cites transcripts and case law and -- I mean, it's beyond the pale. We don't even have lawyers who've been practicing for thirty years filing those kinds of pleadings. So it's -- The benefit is that we know we have an informed litigant here who is not the normal uninformed pro per litigant who is at a loss as to what the law provides and what's required in terms of burden of proof.*

On *July 20, 2007*, Chief District Court Judge Kathy A. Hardcastle issues the unappealed and unchallenged Court Order and inopposite finding of Judge Pomrenze:

> JUDGE HARDCASTLE: Plaintiff's Countermotion for Finding Defendant to be a Vexatious Litigant shall be denied without prejudice.
>
> JUDGE HARDCASTLE: Plaintiff's Countermotion for the Imposition of Sanctions and For Reimbursement of Attorney's Fees shall also be denied.

PLAINTIFF'S ALLEGATION NO. 4:

These post-divorce proceedings were initiated with Chuck's filing of his Motion to Modify Custody and Resolve Parent-Child issues, on *January 20, 2005*. At the time Chuck filed his motion, the parties' son, Mark, was 15 1/2 years old (born August 15, 1989).

VICTORIA'S RESPONSE NO. 4:

VICTORIA contends that ATTONEY DUCKWORTH abuses the legal process and uses Judge Sanchez's authority, help and power to shorten time in order to hear a holiday visitation matter on an emergency nature and challenges the use of a procedure normally reserved for cases of an emergency nature. VICTORIA argues that no real emergency existed other than to abuse the legal process and churn litigation as a catalyst by the simple filing of an action to gain a sham de facto custody and eventually gain primary physical custody. VICTORIA argues that it is the district court's jurisdiction to make short-term temporary

adjustments to the parties' custody arrangement on an emergency basis to protect and safeguard a child's welfare and security and not to allow ATTORNEY DUCKWORTH to file an emergency motion for the children to travel to Chicago at the 12th hour of the Christmas season solely to churn litigation. Koffley v. Koffley, 1260 Md.App. 633, 866 A.2d 161, 166-67 (Ct.Spec.App.2005).

VICTORIA argues ATTORNEY DUCKWORTH purposefully and deliberately violates the Eighth District Court Rule 5.12(a) when he obtains evaluations of (2) psychiatrists without a Court Order in anticipation of filing a Motion For a Change of Custody of Marco. VICTORIA'S loss of parenting both her children was directly caused by such fraudulent act. EDCR 5.12(a) provides:

> That a party may not have a "therapist, counselor, psychologist or similar professional" examine a child for the purpose of obtaining an expert opinion for trial or hearing except upon court order."

ATTORNEY DUCKWORTH blatantly again violates EDCR 12(a) when he cites and quotes and uses as authority without the Court's permission Dr. McCosh's evaluation report whose report was never previously Ordered by this Court:

> *Dr. McCosh noted the following in his evaluation of Mark:*
> *Mark presents as a 15-year old, Caucasian male, who is initially accompanied by his father for the interview...*

ATTORNEY DUCKWORTH commits gross negligence and abuse of process when he further violates EDCR 5.12(a) and cites and quotes and uses as authority Dr. McCosh's evaluation and states:

> *"A copy of the evaluation of J. Alexander McCosh, Ph.D., is attached hereto as Exhibit 1. Similarly a summary of Mark's counseling with Bradley W. Gruner, Psy.D., of the Human Behavior Institute, is attached hereto as Exhibit 2. Dr. McCosh noted the following in his evaluation of Mark:*
>
> *CLINICAL INTERVIEW AND BEHAVIORAL OBSERVATIONS: Mark presents as a 15-year old Caucasian male, who is initially accompanied by his father for the interview. Mark speaks in a very rapid, pressured manner, although he does appear to be comfortable and relaxed in the presence of his father. Mark describes a long-standing history of inattentive, fidgety, and restless behavior. He denies any suicidal or homicidal ideation, and there is no apparent evidence of a thought disorder. Mark is candid in his description of his chronic conflicts with his mother in her home.*
> * * *
> *It should be noted that Mark's mother was contacted in order for her to provide behavioral data describing Mark's functioning in her home. At the time of this dictation, she has not provided such data.*
>
> *Similarly, Dr. Gruner found and concluded as follows:*

"Our work began on 8/12/04 when we conducted an Intake Evaluation. At this time, Mark presented with frustration, anger, depression (supported by the Reynolds Adolescent Depression Scale) low self-esteem, difficulty concentrating, resentment towards his mother, and complaints of unfair disciplinary practices in his mother's home.

Our work included: addressing communication problems proactively (v. reactively); coping with reported "mixed messages" from mom; attempts to "partner" with mom and collaborate about reasonable and doable expectations for conduct and subsequent rewards for successes; developing strategies for de-escalating conflicts with mom; and most recently, addressing Mark's apathy, his resignation to the belief that nothing will change and the learned helplessness that he attributes to his problematic interactions with his mother...
During the court of Mark's therapy thus far, his mother Victoria Lugo, has been invited by the undersigned to attend Mark's sessions of 3 occasions. Though she accepted my invitations verbally, she did not attend any of our sessions.

ATTORNEY DUCKWORTH with malice, fraudulently misled the Court into believing and relying upon the Behavioral Healthcare Options Evaluation and Dr. McCosh's evaluation and Dr. Gruner's evaluation in strict violation of EDCR 5.12(a). VICTORIA further contends that ATTORNEY DUCKWORTH begins to cite and directly quote and use as authority Dr. McCosh's report as *grounds for <u>termination</u>* of custodial rights against VICTORIA as a

"boiler plate." VICTORIA contends that a reasonable person would conclude that ATTORNEY DUCKWORTH'S references to VICTORIA were made with malice when he cites and quotes and uses as authority Dr. McCosh's report and attempts to show that VICTORIA has failed to support her child and that, therefore, her parental relationship should be severed. Again, ATTORNEY DUCKWORTH'S use of misconduct to trick and dupe this Court by deliberately violating EDCR 5.12(a) was willful and intentional and done in reckless disregard of its possible consequences of his desire to illegally snatch Marco[and later Sarah] away from VICTORIA. Nevada Credit Rating Bur. v. Williams, 88 Nev. 601, 503 P.2d 9 (1972).

VICTORIA contends that district courts have the inherent power to set aside judgments procured by extrinsic fraud. Extrinsic fraud has been held to exist when the unsuccessful party is kept away from the court by a false promise of compromise, or such conduct as prevents a real trial upon the issues involved, or any their act or omission which procures the absence of the unsuccessful party at the trial. Further, it consists of fraud by the other party to the suit which prevents the losing party either from knowing about his rights or defenses, or from having a fair opportunity of presenting them upon the trial. Lauer v. District Court, 62 Nev. 78, 140 P.2d 953.

VICTORIA further argues that the change of custody of Marco is invalid due to myriad substantive and procedural defects. This Court failed to evaluate Marco's change of child custody proceedings on its own unique facts and on a *case by case basis and unlawfully combined the contaminated change of custody proceedings of Marco with*

the change of custody proceedings of Sarah. VICTORIA contends that in Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978), this court stated: "It is our underlying policy to have each case decided upon its merits." VICTORIA argues that the district courts have the inherent power to set aside judgments procured by extrinsic fraud. Lauer v. District Court, 62 Nev. 78, 140 P.2d 953.

VICTORIA challenges the Eighth District Court Rules that are silent on the issue of mediation regarding immediate intervention on issues of the children's education, medical, psychological and welfare. VICTORIA argues that Judge Sanchez abuses her discretion when she violates the children's procedural due process rights in not allowing the parties mediation and subsequently allows ATTORNEY DUCKWORTH to *exempt the minor child Marco* from seeking mediation prior to the Court issuing a modification of a change of custody. VICTORIA argues that assessing the children's best interest surely falls within requesting or seeking mediation to resolve parent/child issues on issues of the children's education and welfare.

VICTORIA would further contend that Judge Sanchez is not without control over parental discretion in dealing with the minor child Marco [and Sarah] when their need for parental supervision is jeopardized. VICTORIA contends Judge Sanchez' serious misconduct has been clearly established by aiding ATTORNEY DUCKWORTH and his client when they all clearly ignored the troubling issues of the children's lack of parental supervision and lack of parental guidance in their education. The Supreme Court thinks otherwise and has stated that "A state is not without constitutional control over parental discretion in dealing with children when their

physical or mental health is jeopardized." Parham v. J.R., 442 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979).

CHARLES' ALLEGATION NO. 5:

On July 19, 2005, Chuck filed a similar motion seeking to modify custody pertaining to the parties' daughter, Sarah Elizabeth Giampa, born December 11, 1987.

VICTORIA'S RESPONSE NO. 5:

VICTORIA argues that ATTORNEY DUCKWORTH realizes he made a critical mistake and commits fraud upon the court when he violates EDCR 5.12(a). He bemoans the fact that VICTORIA objects to the change of custody of the minor child Marco, yet at the 12th hour of Sarah reaching the age of majority, since this Court had in the past allowed ATTORNEY DUCKWORTH to violate the Nevada Rules of Civil Procedure, it aids and abets him again and turns a blind's eye to violate Rule 5.81 again without first filing for mediation before filing for a change of primary custody of Sarah. ATTORNEY DUCKWORTH deliberately and maliciously cites and quotes directly from (2) different psychologists' evaluations who had not yet been Ordered by this Court to evaluate Marco and now ATTORNEY DUCKWORTH carries over those (2) contaminated psychological evaluations into the change of custody proceedings of Sarah. ATTORNEY DUCKWORTH'S abuse of process gains a procedural and tactical advantage as a result of not filing for mediation prior to a change of custody of Sarah. VICTORIA would contend that ATTORNEY DUCKWORTH intentionally and repeatedly violates the Rules of Civil Procedure and the Rules of Professional

Conduct in engaging in deceit and fraud upon the court in the malicious preparation of papers for a change of custody. VICTORIA further argues that extrinsic fraud has been held to exist when the unsuccessful party is kept away from the court by a false promise of compromise, or such conduct as prevents a real trial upon the issues involved, or any other act or omission which procures the absence of the unsuccessful party at the trial. VICTORIA contends that it consists of fraud by ATTORNEY DUCKWORTH and CHARLES which prevents the losing party either from knowing about her rights or defenses, or from having a fair opportunity of presenting them upon the trial. Landon v. Landon, 74 Cal.App.2d 954, 169 P.2d 980.

VICTORIA argues that because ATTORNEY DUCKWORTH deliberately and purposefully violates Rule 5.81 in the first proceedings of a change of custody of Marco, he deliberately carried over papers contaminated by fraud and makes the 2nd change of custody of Sarah fraud and all judgments flowing from such judgments as void.

CHARLES' ALLEGATION NO. 6:

Since that time Chuck filed his original motion seeking a change of custody, Victoria has filed more than 40 motions with the District Court. On numerous occasions, she was sanctioned by the District Court for the frivolous nature of these filings.

VICTORIA'S RESPONSE NO. 6:

VICTORIA argues that she was denied a fair trial due to Judge Sanchez's bias. Judge Sanchez purposely favored

CHARLES and gave him an opportunity to purge his contumacious behavior; allowed Marco, Sarah, and Chuck time to further conspire and not call each other on the cell phone after hours; and allowed for a cover-up of the children living alone and without parental supervision. Here Judge Sanchez modified the dates for production of the cell phone records and gave CHARLES another opportunity to purge his contumacious behavior when she made the following ruling:

> *Statements regarding the school MARCO would attend. Court Advised, there is no pending motion regarding the school issue. In April 2005, the parties agreed that MARCO would be enrolled in a Christian School, therefore, that is the Order.*

VICTORIA argues that as soon as she would challenge ATTORNEY DUCKWORTH and CHARLES' violations, this Court would absolve them of such contumacious behavior and allow them to defeat the true spirit and intent of the best interest of the children standard. At this time, the Court issues the following Orders regarding Dr. Mortillaro:

> *The parties SHOULD ask Dr. Mortillaro to expedite the school issues to help the parties resolve this issue amicably. Dr. Mortillaro may speak to and receive reports from any counselors he wishes.*

VICTORIA argues that Judge Sanchez has undertaken to severely sanction VICTORIA on numerous occasions causing an unjust and suspect result because the award of such huge financial sanctions have impaired her financial ability to be in compliance with the prior arrangement to

pay Court ordered attorney *sanctions for fees* to counsel of record for CHARLES. Stedtheld v. State, 114 Idaho 273, 755 P.2d 1311, 1314 (1988) (to show a violation of due process, the petitioner must demonstrate the judge's vindictiveness or intent to punish him for exercising his rights). The joint adverse impact of not receiving the regular monthly spousal support combined with the imposition of excessive sanctions for fees have resulted and created a financial hardship for VICTORIA. VICTORIA compares the massive sanctions imposed upon her to criminal contempt and argues that it is a result of desperately trying to protect her children from ATTORNEY DUCKWORTH'S abusive tactics. VICTORIA contends that the amount of excessive sanctions Judge Sanchez imposed transformed it into a criminal fine. The Supreme Court has states that "these practices tend to impose unjustified burdens on other parties, frustrate those who seek to vindicate their rights in the courts, obstruct the judicial process, and bring the civil justice system into disrepute. Schwarzer, Sanctions Under the New Federal Rule 11-A A Closer Look, 104 F.R.D. 181, 182 (1985).

VICTORIA further contends that a reasonable person would conclude that this Court was incorrect in its findings about the reasonableness of the amounts and further conclude that the mere size of the sanctions transformed it into criminal fines. Miranda v. Southern Pacific Transportation Co., 710 F.2d 516, 521 (9th Cir. 1983). VICTORIA further challenges this allegation because she recalls when she had been severely sanctioned having been deemed to have filed frivolous and otherwise legally insufficient papers before the Court. CHARLES, and his counsel of record, then sought and obtained such hefty and massive sanctions against her.

VICTORIA sets forth a review of a history of massive sanctions imposed against her by this Court that she defends as unconscionable and outrageous as follows:

> *2/11/04 GLORIA S. SANCHEZ:*
> *Plaintiff's request for attorney's fees is GRANTED as he is the prevailing party and Plaintiff's request for sanctions under EDCR 7.60 and NRCP 11 is GRANTED. Defendant has filed suits in every forum conceivable after the settlement was reached and Plaintiff has to respond and incur fees and costs to defend himself. The Court must find that when there is no relief awarded in all of the different rulings and different forums, this is just a form of harassment and frivolous. COURT ORDERED, $6,000 in ATTORNEY'S FEES awarded to Plaintiff and SANCTIONS in the amount of $1,500 awarded for a total of $7,500.00 and that amount is REDUCED TO JUDGMENT. The $7,500.00 is to be paid by an offset of $500 per month from the property equalization payment until the $7,500.00 is paid in full. FURTHER, if similar pleadings are filed in the future that are non-meritorious, the fees and sanctions will be higher. [DICKERSON, DICKERSON, CONSUL & POCKER]*
>
> *4/26/05 GLORIA S. SANCHEZ: With respect to fees as to the custody issues, COURT ORDERED, FEES and/or SANCTIONS are DEFERRED until the evidentiary hearing.*
>
> *Regarding fees for Defendant's countermotion to increase support, that request was denied, however,*

Defendant had to respond to Plaintiff's motion for change of custody and file a countermotion, therefore, the Court will award a partial amount of fees with respect to the countermotion to increase and ORDERED, $850.00 in ATTORNEY'S FEES awarded.

Regarding Defendant's countermotion to clarify and reconsider filed on February 14, 2005, the Court has not found any viable issues for relief that have been raised, therefore, COURT ORDERED, $1,500 in ATTORNEY FEES awarded for that motion.

Regarding Defendant's motion to clarify filed on March 15, 2005 asking Family Mediation Center to conduct an investigation, the Court has denied that motion and a modest amount of FEES in the amount of $750.00 awarded.

Regarding Defendant's motion to re-issue subpoenas filed on February 28, 2005, that request has been denied, therefore, FEES in the amount of $1,500 awarded for that motion.

Regarding the motions to continue and require the parties to go to mediation, the Court will not award any fees on those motions because they did not generate a response and the Court does not believe the parties have the ability to communicate and/or negotiate.

COURT ORDERED, a modest SANCTION of $750.00 awarded against Defendant for raising issues that

have been previously ruled on and are specifically on appeal. The sanctions and attorney's fees are REDUCED TO JUDGMENT and are payable to Mr. Duckworth.

Beginning on May 15, 2005 and on the 15th of each month, Defendant is to pay Mr. Duckworth $500.00 until the total amount is paid in full. If Defendant falls 30 days behind on the payments in any month, Plaintiff will deduct the $500.00 from the debt equalization payment and he will send it to Mr. Duckworth.[SMITH LARSEN & WIXOM]

2/27/06 MINUTE ORDER:
Statement regarding the sanctions previously awarded against Defendant. COURT FINDS, the fees that were awarded to Mr. Duckworth were $5,350. Parties agree that Defendant paid three payments of $500.00 for a total of $1,500, leaving $3,850 due. Subtracting the $800.00 in sanctions awarded against Plaintiff last date, leaves $3,005 due. Plaintiff offset $2,500.00 from the equalization payments, leaving $550.00 due.

3/3/06 DISCOVERY COMMISSIONER MORRISA SCHECHTMAN, COMMISSIONER RECOMMENDED AS FOLLOWS:
Plaintiff is AWARDED $1,500.00 in ATTORNEY FEES and is REDUCED TO JUDGMENT against Defendant.

ATTORNEY FEES of $15000.00 awarded retroactively to the 3-31-06 hearing and $1500 for today's hearing.

12/27/07 JUDGE POMRENZE issues the following Orders:

Argument regarding countermotion for attorney's fees, attorney Duckworth's contention that Defendant continues to raise custodial issues, Defendant's request for sanctions alleging that Plaintiff's Countermotion did not contain Points and Authorities and was therefore improper.

12/28/07 HEARING is taken off calendar as the issues are on appeal;

Defendant's Motion for Stay is Denied;
Court finds Defendant is a Vexatious Litigator, given the number of motions filed over the years and the number which have been found to be non-meritorious, therefore, Defendant must get the permission of the Court to file any future motions; Plaintiff is awarded Attorney's Fees in the amount of $1,500.00;
Defendant's request for sanctions against Plaintiff is denied as being non-meritorious.
Plaintiff was not barred from filing a Countermotion and the Countermotion was meritorious in part.

VICTORIA contends Judge Sanchez abuses her discretion when she fails to impose sanctions on ATTORNEY DUCKWORTH and CHARLES for contempt and they should have been precluded from receiving sanctions.

Ingham v. United States, 167 F.3d 1240, 1246 (9th Cir.1999).

VICTORIA further argues that the discovery of new evidence that ATTORNEY DUCKWORTH'S willful deceit and fraud upon the court further violates EDCR 16.1(2) Disclosure of Expert Testimony when he fails to provide VICTORIA with written reports of the (3) witnesses named in his disclosure. EDCR 16.1(2) states in pertinent part:

> (B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The Court, upon good cause shown or by stipulation of the parties, may relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

VICTORIA contends that that pursuant to 16.1(f) Sanctions, that this Court has the power to sanction ATTORNEY DUCKWORTH and CHARLES for their willful deceit and fraud upon the court when they violate Mandatory Trial Pretrial Discovery Requirements which state in pertinent part:

> In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

ATTORNEY DUCKWORTH's pattern and practice of willful abuse of process is to deviously style numerous captions Points & Authorities; however, the motion and/or countermotions are devoid of statutes, rules, and citations to authority. VICTORIA argues that Judge Sanchez and Judge Pomrenze commits misconduct when they deliberately ignore ATTORNEY DUCKWORTH repeatedly filing responsive papers before this Court that lack a memorandum of Points and Authorities and an affidavit as required by E.D.C.R. 2.20 which states in pertinent part:

> (b) Within 10 days after the service of the motion, the opposing party must serve and file written opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion should be denied. Failure of the opposing party to serve and file written

opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.

(e) A memorandum of points and authorities which consists of bare citations to statutes, rules, or case authority does not comply with this rule and the court may decline to consider it. Supplemental briefs will only be permitted if filed within the original time limitations of paragraphs (a), (b), or (d), or by order of the court.

VICTORIA further contends that ATTORNEY DUCKWORTH'S affidavit is silent on the basis of how his client, CHARLES, has been harmed or prejudiced. ATTORNEY DUCKWORTH should have put these claims in his affidavit or instructed his client to draft and sign an affidavit himself. In addition, ATTORNEY DUCKWORTH purposely omits filing and attaching affidavits proscribed by EDCR 2.21, Affidavits on Motion which provides in pertinent part:

(c) Affidavits must contain only factual, evidentiary matter, conform with the requirements of N.R.C.P. 56(e), and avoid mere general conclusions or argument.
Affidavits substantially defective in these respects may be stricken, wholly or in part.

On *October 2, 2007*, CHARLES attempts to evade VICTORIA'S motions and settlement offer by filing in bad faith [one month prior to rejecting VICTORIA'S genuine offer of settlement] Ex-Parte Motion For Order to Show

Cause Why Defendant Should Not Be Held In Contempt of Court; Plaintiff's Motion For Contempt and For The Imposition of Sanctions Against Defendant And For an Award of Attorney Fees. VICTORIA contends that CHARLES rejecting VICTORIA'S genuine offer and filing a Contempt Motion was solely to unreasonably delay litigation, harass and increase litigation by proceeding to trial which was grossly unreasonable and made in bad faith with no hope for VICTORIA to recover. In improperly filing an ex-parte motion, CHARLES violated the true spirit of obtaining a proposed genuine settlement between the parties and should be severely sanctioned.

CHARLES' ALLEGATION NO. 7:

Victoria fails to cite appropriate legal authority justifying her request for a stay.

VICTORIA'S RESPONSE NO. 7:

VICTORIA challenges ATTORNEY DUCKWORTH'S statement as that VICTORIA fails to cite authority because she has been diligent in filing papers and motions and has never shirked her duty to cite statutes and case law as authority before this Court and any other Court since the inception of this case. In addition, the Supreme Court of Nevada, Civil Appeals Pilot Program outlined the instructions in How To Fill Out the Form for a Motion For Stay (Child Custody) For Parties Without Attorneys and stated in pertinent part:

> INSTRUCTIONS: The Nevada Supreme Court prefers short and direct statements. Citation to legal

authority or the district court record is not required but would be helpful to the Court.

CHARLES' ALLEGATION NO. 8:

Pursuant to NRS 129.010 and NRS 125A.035, the District Court no longer has jurisdiction over Sarah and Mark in light of their emancipation. In light of the children's emancipation, her arguments are absurd and frivolous. The District Court no longer has the jurisdiction to order the children to visit with Victoria, "to have them live with her," or to "participate in any of their important life decisions."

VICTORIA'S RESPONSE NO. 8:

VICTORIA challenges the constitutionality of the statutes and argues that Judge Pomrenze's [and Judge Sanchez's] courtroom demeanor and conduct toward VICTORIA implied a hostile feeling and spirit of ill will and resulted in prejudice to VICTORIA and her children. The record in this case is replete with the Court's implicit disapproval of VICTORIA attempts to protect these children as an impossibility because in the Court's minds these minor children [15 year old 'new age 18'] were emancipated in this Court's mind. VICTORIA argues that Judge Sanchez and Judge Pomrenze both subjectively characterized VICTORIA'S deep concerns about her children as futile. VICTORIA argues that Judge Sanchez and Judge Pomrenze made age-based distinctions of the minor children that violates the Equal Protection Clause.

VICTORIA further argues that the statutes at issue are facially neutral. It creates no classifications and sets forth

that child custody determinations should be based solely on "the best interest of the child." This Court applied an evenhanded application to the statutes and deliberately violated NRS 125.480 by rushing the minor children into early emancipation without procedural due process notice and an opportunity to be heard; thus, denying the minor children a relationship with VICTORIA and deprived her of her rights and responsibilities of child rearing. VICTORIA contends that any parent of ordinary intelligence would not give up hope to try to convince the Court to protect these children. The brief portion of the record shows Judge Pomrenze denying VICTORIA'S seemingly reasonable requests to issue an order to protect her children and demonstrates a fixed judgment that requires her to recuse herself and restore the absolute confidence of the parties in the fairness of these proceedings. VICTORIA argues that Nevada's public policy in determining custody of a *minor child*, the sole consideration of the court, is the best interest of the child," and not treating minors arbitrarily by denying them a right based solely on a few months' difference in age.

VICTORIA argues that Judge Pomrenze's legal error, motivated by bad faith, ignores the children's troubling issues under the best interests of the children standard and focuses instead on matters that are wholly irrelevant, such as the fact that ATTORNEY DUCKWORTH abuses the process and requests a needless continuance on the eve of a hearing. Attorney Duckworth represents to the Court and states in his motion that he is from the law firm Smith, Larsen & Wixom, but he does not inform the Court the reason that another attorney from this same firm could not make an appearance. After all, the hearing scheduled for *July 24, 2007*, is simply on the Court's Motion calendar and

certainly is not a trial or an evidentiary hearing arguably justifying Attorney Duckworth's specific attendance. His request for a continuance is yet another dilatory tactic and bad-faith interference with the administration of justice. In addition, Judge Pomrenze did not evaluate the timeliness of ATTORNEY DUCKWORTH'S motion and failed to balance VICTORIA'S constitutional right to a hearing against the inconvenience and delay that would result from the continuance.

VICTORIA contends that the language used by Judge Pomrenze in the *July 19, 2007*, Court Minute Order is facially and literally ambiguous and unreasonably subject to interpretation requiring immediate court intervention for correction and/or clarification in order to ensure compliance. VICTORIA contends that generally the Nevada Rules of Appellate Procedure deem a Minute Order a nonappealable Order. Judge Pomrenze's Minute Orders on July 19, 2007 as follows:

> Court noted ongoing issues regarding the children, however, both children will have emancipated within a month, therefore, those issues will not be addressed. Court noted issues of arrearages and attorney's fees. Argument regarding request to continuance due to conflicting schedule of attorney Duckworth. Defendant recited her statement on the record....
>
> All pending Motions will be addressed at the next hearing date; 7/24/07. Motions CONTINUED to 8/28/07.

> No Order is required from today, the Minutes will stand as the Order.

VICTORIA challenges for a second time this Court's premature mandate that these *minor children will soon emancipate without first issuing orders regarding* the minor children's best interest and the need for intervention into issues of their education and psychological and medical needs pursuant to NRS 125.140(2). These children still have no capacity to contract for a rental agreement at the Country Club Towers, and they are still subject to legal control by their father. This Court has never conducted an independent hearing nor issued Orders declaring the minor children legally emancipated pursuant to NRS 129.080: Judicial Emancipation of Minors and NRS 129.120 Hearing; Duties and powers of court; considerations in grant or denial of petition which states in pertinent part:

> 4. The grant or denial of the petition is a matter within the discretion of the court. In making its determination, the court shall consider:
> a.) whether the parents or guardian of the minor have consented to emancipation;
> b.) whether the minor is substantially able to support himself without financial assistance;
> c.) whether the minor is sufficiently mature and knowledgeable to manage his affairs without the guidance of his parents or guardian; and
> d.) whether the emancipation is in the best interest of the minor.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable

parents would have a difficult time understanding that a culture of indifference permeates Family Court against children age 15 and older and that this indifference permeates this Court. That this Court could cut off parents' rights as joint custodians and their rights could cease at any time before a child age 15 reaches the 'new age 18' even though the legislature failed to give a well-defined definition for the term "joint custody."

CHARLES' ALLEGATION NO. 9:

Victoria further argues that the "children's need for counseling and/or vocational rehabilitation training to complete their education is still a vital claim for their prospective relief and is an exception to the mootness doctrine." Again, the District Court has no jurisdiction to entertain any such request for relief.

VICTORIA'S RESPONSE NO. 9:

In denying mediation, this Court failed to protect the procedural rights of the children and parents which resulted in the children's loss of educational opportunities and seriously infringed upon VICTORIA'S opportunity to participate in these same opportunities.

VICTORIA contends that this Court failure to Order mediation to determine Marco's and Sarah's immediate need for counseling, tutoring and guidance in their education, prevented her full and effective parental participation and guidance and violated constitutional procedural requirements. Town of Burlington v. Dept. of Educ., 736 F.2d 773, 783 (1st Cir. 1984). VICTORIA again

argues that this Court's denial of arbitration at this juncture was critically important because it pit the children against VICTORIA in an adversarial position and now made this child custody case fault-based. VICTORIA further contends that the children's need for an immediate intervention for an effective education does not moot claims for monetary damages. The Court has ruled in Ceniceros v. Board of Trustees of the San Diego Unified Sch. Dist., 106 F.3d 878, 879 (9th Cir. 1997), that Ceniceros' only claim for monetary damages survives. In O'Neal v. City of Seattle, 66 F.3d 1064, 1066 (9th Cir. 1995), the Court has ruled that "O'Neal's claim for damages saves this case from a complete mootness bar."

CHARLES' ALLEGATION NO. 10:

Accordingly, there is absolutely no chance that the "movant is likely to prevail on the merits in the appeal" with respect to orders pertaining to the parties' adult children.

VICTORIA'S RESPONSE NO. 10:

VICTORIA argues that the Courts have ruled that fraud upon the court harms the integrity of the judicial process and resulted in a miscarriage of justice. That fraud upon the court "must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision." Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128, 1131 (9th Cir.1995) VICTORIA contends that because Judge Sanchez failed to make independent Findings of Fact and Conclusions of Law on the merits in the 1st change of custody proceedings of Marco, that ATTORNEY DUCKWORTH'S second Motion to Modify

Custody filed on *July 19, 2005* must fail and is void. Here, the Court did not provide VICTORIA with the opportunity to be heard independently after ATTORNEY DUCKWORTH filed Findings of Fact and Conclusions of Law on the 1st change of custody proceedings of Marco. VICTORIA contends that this is particularly troubling given that this Court made *combined* Findings of Fact and Conclusions of Law based on *contaminated change of custody proceedings of Marco*, that VICTORIA reasons that she would *prevail* on a both change of custody proceedings solely on Dr. Mortillaro's written evaluation of the parties. Moreover, this Court prejudiced and deprived VICTORIA the opportunity to challenge CHARLES' statements that he was living with the children at the Country Club Towers and denied her bringing forth evidence of the only psychiatrist who was Court Ordered to evaluate the parties before the evidentiary hearing. Instead, ATTORNEY DUCKWORTH'S gross negligence, bad faith, and willful misconduct in contacting, citing as authority from (2) psychiatrists not previously ordered by this Court went totally against Dr. Mortillaro's evaluation that these children were not to live alone without supervision. VICTORIA further argues that ATTORNEY DUCKWORTH'S misconduct to use (2) psychiatrists' evaluations not previously ordered by this Court combined with his failure to present Dr. Mortillaro as a trial witness does not excuse ATTORNEY DUCKWORTH'S gross negligence since his client has the burden to show a change in substantial circumstances. VICTORIA contends that this alone constitutes error and misconduct on Judge Sanchez' part.

CHARLES' ALLEGATION NO. 11:
First, Victoria continues to maintain that she has substantial evidence (in the form of "cell phone records, police reports, affidavits from friends") that would have resulted in the Court denying Chuck's motion to modify custody of their children.

VICTORIA'S RESPONSE NO. 11:

ATTORNEY DUCKWORTH'S silence is deafening on this particular troubling issue. On 3/23/05, unbeknownst to VICTORIA, she discovers new evidence of fraud upon the Court that CHARLES had signed a lease and rented an apartment in the amount of $1,500.00 at the Country Club Towers. VICTORIA attached as an exhibit the lease CHARLES entered into at the Country Club Towers. CHARLES had enticed the parties' children with the prospect of living alone and unsupervised in their own apartment. VICTORIA argues that a reasonable person would assume that CHARLES could not assume the role of a de facto parent on a day-to-day basis fulfilling both the children's physical and psychological needs, the children's care and affection for a substantial period when he had not yet filed a complaint for divorce nor filed for a legal separation from his wife. Now CHARLES' devious motivation and ATTORNEY DUCKWORTH'S fraud upon the court in filing for a change of physical custody had already gained momentum. Marco was deliberately provoking arguments with his mother, acting out and breaking house rules. Marco [and Sarah] is now in a loyalty conflict between VICTORIA and CHARLES who is waving the proverbial carrot [car/money/cell phones/renting an apartment] in front of their noses and *coaching the*

children to fabricate any conflict the children and their mom are having in direct violation of Judge Thompson's Order. Charles renting an apartment for the children was a disruption and created more instability at times of visitation. Because of his busy work schedule, clearly CHARLES' habit and pattern is leaving the minor children alone and without parental supervision. The parties' irresponsible children in essence have been rewarded by the court in their efforts at bad behavior evidenced by Marco's Individual Discipline Report from Bishop Gorman High School dated 3/14/05:

ALL INCIDENTS WITHOUT DETAILS:

3-3-05	Disruptive behavior
3-1-05	In possession of pager, phone, lazer, et.
2-22-05	Insubordination of staff, etc.
2-16-05	Disruptive behavior
1-11-05	CONTRACT STATUS
1-10-05	Inappropriate behavior in class
12-9-04	In possession of paper, phone, lazer, etc.
12-7-04	DISCIPLINARY PROBATION STATUS
12-3-04	Inappropriate behavior in class
12-2-04	Failure to comply with misc. instruction
11-5-04	Inappropriate behavior in class
2-22-04	Inappropriate behavior in class
9-10-04	Inappropriate behavior in class
2-8-05	BISHOP GORMAN HIGH SCHOOL PROGRESS REPORT
Health – F	Religion - F

CHARLES' ALLEGATION NO. 12:

Victoria later argues that the undersigned "deliberately carried forward to moot this case solely to vindicate Charles' interest in maintaining primary custody, recovering attorney fees, and at the same time inducing this Court to threaten and punish Victoria with more severe sanctions for fees."

VICTORIA'S RESPONSE NO. 12:

VICTORIA argues that Judge Sanchez has undertaken to severely sanction VICTORIA on numerous occasions causing an unjust and suspect result because the award of such huge financial sanctions have impaired her financial ability to be in compliance with the prior arrangement to pay Court ordered attorney *sanctions for fees* to counsel of record for CHARLES. Stedtheld v. State, 114 Idaho 273, 755 P.2d 1311, 1314 (1988) (to show a violation of due process, the petitioner must demonstrate the judge's vindictiveness or intent to punish him for exercising his rights). The joint adverse impact of not receiving the regular monthly spousal support combined with the imposition of excessive sanctions for fees have resulted and created a financial hardship for VICTORIA. VICTORIA compares the massive sanctions imposed upon her to criminal contempt and argues that it is a result of desperately trying to protect her children from ATTORNEY DUCKWORTH'S abusive tactics. VICTORIA contends that the amount of excessive sanctions Judge Sanchez imposed transformed it into a criminal fine. The Supreme Court has states that "these practices tend to impose unjustified burdens on other parties, frustrate those who

seek to vindicate their rights in the courts, obstruct the judicial process, and bring the civil justice system into disrepute. Schwarzer, Sanctions Under the New Federal Rule 11-A A Closer Look, 104 F.R.D. 181, 182 (1985).

VICTORIA further contends that a reasonable person would conclude that this Court was incorrect in its findings about the reasonableness of the amounts and further conclude that the mere size of the sanctions transformed it into criminal fines. VICTORIA contends that while Judge Sanchez warned of the potential of more sanctions, the Court never considered imposing less drastic sanctions as an alternative. Although Rule 11 is mandatory in its terms, nonetheless pro se litigant should not be judged by standards identical to those applicable to lawyers. Hughes v. Rowe, 449 U.S. 5, 15 (1980). "An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claim."

CHARLES' ALLEGATION NO. 13:

Victoria's suggestion is that the District Court denied her the opportunity to present her evidence in opposition to Chuck's requested relief, and that the undersigned delayed these proceedings. This argument presented to the Court by way of her Motion is false and absurd. Victoria conveniently omits from her discussion the fact that she had the opportunity to present her evidence regarding the care of the parties' children at the evidentiary hearing scheduled for August 30, 2006. Chuck was prepared to proceed with the evidentiary hearing on August 30, 2006. Victoria, however, curiously asked the Court for a continuance of the hearing that she now complains that she never received.

The District Court warned Victoria that a continuance of the evidentiary hearing would result in a newly scheduled hearing date that would be set only months prior to Mark's emancipation. The District Court even recommended to Victoria that she proceed with the evidentiary hearing given the long delay until the next scheduled evidentiary hearing date. Victoria balked, and pressed forward with her request for a continuance. For Victoria now to complain that she somehow lost the opportunity to present evidence and protect her "due process" and 'constitutional" rights is patently absurd. Victoria – not Chuck or the undersigned – delayed these proceedings to the point that the children both had emancipated by the time an evidentiary hearing could be conducted.

VICTORIA'S RESPONSE NO. 13:

VICTORIA contends that Judge Sanchez's repeated failure to order a visiting judge and her overall neglect of this matter leaves VICTORIA with no other choice but to conclude that this Court is clearly biased and prejudiced and commits an abuse of discretion in deliberately moving this matter forward in an efficient and proper manner. Judge Sanchez made the following determination as to discovery:

> *VICTORIA: One other issue I wanted to address for today, your Honor. I was not able to obtain discovery. I had noticed Charles Giampa. I had attempted to take his deposition, and he failed to show. I sent a letter to counsel and counsel -- what I'm arguing is that these issues were split, because some issues did not require the production of documents, so therefore,*

in the spirit of cooperation, Plaintiff Giampa should have made himself available for the portions of the deposition that could have gone forward that day. Of course we could have continued the deposition until a later date, giving the Plaintiff an opportunity to respond to the production of documents. But again, I feel that I would be at a disadvantage to try to cross-examine Plaintiff Giampa on issues of his lack of supervision, the interrogatories, and his affidavit which I have not had an opportunity to ask him about.

JUDGE SANCHEZ: Well, you have the chance to ask him under sworn oath, and that's all a deposition would be, would be him sworn and testifying under oath. So you have the same opportunity in these next 8 hours if the concern is custody related. The main goal, the main purpose, for setting the evidentiary was to determine custody, time share, those kinds of issues. A deposition is sworn testimony under oath just as him being on the witness stand with you having a chance to examine him; that's the same thing. It's better, because I'm here to rule on objections instead of preserving them for the record, so -- you already have the same chance you would at a deposition, so I don't see that there's a disadvantage in terms of custody and you withdrew your appeal so we could go forward on custody.

VICTORIA: And your Honor, we discussed this, that the reason I withdrew my appeal is so the issue of discovery could go forward, and right now you're

denying me that due process right to take his deposition.

JUDGE SANCHEZ: Are you asking me now to continue the custody hearing?

VICTORIA: Yes, I would like that so I could take his deposition, your Honor.
VHS 14:18:19

...

VICTORIA: But the -- as far as the issue of the appeal, you had made the decision, because the issues were up on appeal, that I could not proceed with discovery, so I withdrew the appeal, leaving the issue of discovery open, and now I feel that I'm being held at a disadvantage without --

THE COURT: No. What I said was when you have appealed a discovery order that pertains to the child and we have and evidentiary hearing that pertains to custody issues, I don't have jurisdiction to hear it unless you withdraw your appeal, so it was up to you if you wanted the Supreme Court to rule, but that would mean we'd have to delay the hearing today, or if you wanted to withdraw your appeal, so we could go forward. Withdraw it, but you have to timely file any discovery requests. (VHS 14:09:32)

VICTORIA: Your Honor, do you have the power to make that decision on my discovery requests?

THE COURT: Sure.

VICTORIA: Since he has a history of not --

THE COURT: The Discovery Commissioner hears it initially and makes a recommendation and then you have a right to do an objection.

VICTORIA: You, your Honor, do you have that power?

THE COURT: All district court judges have that power, but they normally start with the discovery commissioner who makes that recommendation, and then we hear it on objection. (VHS 14:37:55)

VICTORIA contends that after *she withdrew her appeal on July 30, 2006* to seek discovery, Commissioner Schectman also prevented VICTORIA from seeking discovery. The effect of the delay denied PLAINTIFF the opportunity to confirm by sworn testimony that CHARLES' commits fraud upon the court in leaving the children alone and unsupervised without parental supervision and receipt of an unlawful reduction in his monthly spousal support income by unsubstantiated and false claims of loss of gross annual income.

VICTORIA argues that the Court has taken an inconsistent position regarding its jurisdiction when she states to VICTORIA that it did have 'the power to make a decision on VICTORIA'S discovery requests.' The Court deliberately caused the excessive delay as the case was inappropriately transferred to Discovery Commissioner Schechtman and then back to Judge Sanchez, and then back to Discovery Commissioner Schechtman and then back to Judge Sanchez.

The excessive delay prevented VICTORIA from her constitutional right to parent her children and it denied the children being protected by VICTORIA. In addition, the effect of the excessive delay prejudiced her and denied VICTORIA a separate evidentiary hearing to object to the change of primary custody of Marco based on the substantial evidence that CHARLES left the children alone without parental supervision. VICTORIA further argues that Judge Sanchez, ATTORNEY DUCKWORTH, Discovery Commissioner Schechtman, and CHARLES caused the excessive delay thereby affecting an unconstitutional taking of VICTORIA'S children. ATTORNEY DUCKWORTH filed a Motion for a Change of Custody in *January of 2005*, but VICTORIA was prevented from seeking reasonable discovery, and that absent the delays, a change of custody likely would have been awarded in VICTORIA'S favor based on the substantial evidence she brought forth that CHARLES had shunned the parties' children and rented an apartment for them at the Country Club Towers leaving them alone without parental supervision. VICTORIA further contends that Courts have expressed their view that "The period of time in constituting unreasonable delay need not be extensive if 'the future holds only the prospect of continued improprieties." Harrison v. Health Net Health Plan of Oregon, No. CV 02-1320 HA, 2005 WL 465132, at *2 (D.Ore., February 28, 2005).

CHARLES' ALLEGATION NO. 14:
Second, Victoria suggests that the undersigned "obtained an expert opinion not once but twice in anticipation of filing a motion for a change of custody prior to Judge Sanchez ordering a psychiatric evaluation of the parties." Victoria's suggestion is that the undersigned sought and obtained

expert opinion on his own with respect to the issues of custody. There is no such evidence in the record. In reality, the parties' son had been engaged in counseling for several months. His counselors did not perform a custody evaluation. Rather, they simply reported their observations to Chuck. These observations included mark's unwaivering [sic.] and fervent desire to live with his father.

VICTORIA'S RESPONSE NO. 14:

[See VICTORIA'S RESPONSE NO. 11 re Marco and Sarah]

VICTORIA argues that ATTORNEY DUCKWORTH obtains Dr. McCosh's and Dr. Gruner's psychological evaluations of Marco prior to Judge Sanchez ever issuing an Order and cites and quotes and uses it as authority in strict violation of EDCR 5.12(a). VICTORIA argues that ATTORNEY DUCKWORTH'S preparation of and participation in the concealment of the (2) psychological evaluations violates the Rules of Professional Conduct. "Because the courts of this state must rely upon the assistance of attorneys to ascertain the truth of matters before them, attorneys must be fair and forthright with the courts." Matter of Discipline of Mines, 523 N.W.2d 424, 426 (S.D. 1994). The Courts have further ruled that "it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Mines, 523 N.W.2d at 426. ATTORNEY DUCKWORTH acts with malice when he fraudulently misled the Court into believing and relying upon the Behavioral Healthcare Options Evaluation and Dr. McCosh's evaluation and Dr. Gruner's evaluation in strict violation of EDCR 5.12(a).

VICTORIA further contends that ATTORNEY DUCKWORTH begins to cite and directly quote from Dr. McCosh's report as *grounds for termination* of custodial rights against VICTORIA as a "boiler plate." VICTORIA contends that a reasonable person would conclude that ATTORNEY DUCKWORTH'S references to VICTORIA were made with malice when he cites and quotes from Dr. McCosh's report and attempts to show that VICTORIA has failed to support her child and that, therefore, her parental relationship should be severed. Again, ATTORNEY DUCKWORTH'S use of misconduct to trick and dupe this Court by deliberately violating EDCR 5.12(a) was willful and intentional and done in reckless disregard of its possible consequences of his desire to illegally snatch Marco [and later Sarah] away from VICTORIA. Nevada Credit Rating Bur. v. Williams, 88 Nev. 601, 503 P.2d 9 (1972).

VICTORIA contends that at this time ATTORNEY DUCKWORTH requests a psychiatric evaluation of the parties. VICTORIA would point out that CHARLES had previously requested her to attend an evaluation session with Dr. McCosh six (6) months prior to the Court Ordering a psychiatric evaluation in clear violation of EDCR 5.12(a). Clearly, CHARLES tries to entrap VICTORIA to get pre-evaluated prior to Judge Sanchez issuing any Court Order for a psychiatric evaluation of the parties. Once bitten, twice shy, [CHARLES' forging her name to documents, allowing the car to be repossessed, failing to pay support obligations] VICTORIA was suspicious that his invitation was an attempt to entrap her and was part of his elaborate scheme to gain primary custody of the children in the near future.

On *July 24, 2006*, ATTORNEY DUCKWORTH seals his pattern and practice of willful deceit and fraud upon the court in stone when he writes a letter to VICTORIA disclosing a list of experts who had never been approved nor ordered by this Court to conduct an evaluation in strict violation of EDCR 5.12(a):

> *Pursuant to the Court's Order, the following is the schedule of witnesses we intend to call at the evidentiary hearing:*
>
> *Charles Giampa;*
> *LaDeana Gamble;*
> *Victoria Giampa;*
> *Mark Chambers, Ph.D.;*
> *Jay Alexander McCosh, Ph.D.;*
> *Bradley W. Gruner, Psy.D.*
>
> *Please be advised that, at this time, we do not intend to call Dr. Louis Mortillaro as a witness at the evidentiary proceedings.*
>
> *Bryce C. Duckworth.*

VICTORIA further argues that this discovery of new evidence is where ATTORNEY DUCKWORTH'S willful deceit, gross negligence, abuse of process and fraud upon the court further violates EDCR 16.1(2) Disclosure of Expert Testimony when he fails to provide VICTORIA with *written reports* of (3) witnesses named in his disclosure. EDCR 16.1(2) states in pertinent part:

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The Court, upon good cause shown or by stipulation of the parties, may relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

VICTORIA contends that that pursuant to 16.1(f) Sanctions, that this Court has the power to sanction ATTORNEY DUCKWORTH and CHARLES for their willful deceit and fraud upon the court when they violate Mandatory Trial Pretrial Discovery Requirements which state in pertinent part:

In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable

expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

CHARLES' ALLEGATION NO. 15:

Third, Victoria alleges that "Judge Sanchez failed to follow its own procedural rules and ignored and allowed Attorney Duckworth to surreptitiously combine the change of custody of Sarah with the change of custody of Marco." The record below reflects that the District Court refused to enter any orders regarding Sarah until such time as Chuck had filed an appropriate motion regarding Sarah's custody, and noticed Victoria with such a motion. Chuck filed his Motion to Modify Custody and Resolve Parent-Child Issues; Motion for Order to Show Cause and Related Relief on July 19, 2005. Thus, for Victoria to attempt to smear the reputation of the undersigned as acting in some underhanded manner is false.

VICTORIA'S RESPONSE NO. 15:

VICTORIA argues that the newly discovered evidence is that Judge Sanchez willfully commits willful misconduct and abuses its discretion when it allows ATTORNEY DUCKWORTH to proceed to file and proceed with the contaminated proceedings of a change of custody of Marco by initially violating EDCR 5.12(a) and thereafter fraudulently combine the 1st change of custody proceedings of Marco with the 2nd custody proceedings of Sarah. VICTORIA further argues that Judge Sanchez commits

willful misconduct when she first fails to resolve the 1st custody proceedings of Marco on its *own unique merits.*

VICTORIA further argues that this Court abuses its discretion since the Nevada District Court has previously recognized that the basic underlying policy is to have each case decided on its merits and as such, its determinations must be set aside. Tahoe Village Realty v. DeSmet, 95 Nev. 131, 134, 590 P.2d 1158, 1161 (1979). VICTORIA further contends that Nevada judicial policy favors a decision on the merits and heightens in domestic relations matters. Dagher v. Dagher, 103 Nev. 26, 28, 731 P.21 1329, 1330 (1987).

DATED this 15th day of JULY 2008.

By: _____
Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Pro Se

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: June 12, 2008

Tracie K. Lindeman
Clerk of Supreme Court

No. 51422

ORDER DENYING MOTION FOR STAY

On May 29, 2008, appellant filed in this court a motion for stay. Having reviewed the motion, we conclude that a stay is not warranted.[1] Accordingly, appellant's motion is denied.

It is so ORDERED.

_____, J
Maupin

_____, J.
Cherry,

_____, J.
Saitta

[1] NRAP 9(c) and (d); Fritz Hansen A/S v. Dist Ct., 116 Nev. 650, 6 P.3d 982 (2000).

ORDR
BRYCE C. DUCKWORTH, ESQ.
Nevada Bar No. 004251
SMITH, LARSEN & WIXOM
1935 Village Center Circle
Las Vegas, Nevada 89134
(702) 252-5002
Attorneys for Plaintiff/Counterdefendant

FILED
March 7, 2008
Clerk of the Court

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

CHARLES FRANK GIAMPA, Plaintiff/Counterdefendant,	)	
v.	)	CASE NO. 98D224029
VICTORIA MARGARET LUGO-GIAMPA,	)	
Defendant/Counterclaimant.	)	Date of Hearing: 2/27/07 Time of Hearing: 10:00 a.m.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

This matter came on for hearing before the above-entitled Court on (1) Defendant's Motion to Stay Judgment Pending Appeal; (2) Defendant's Motion for Reconsideration of the Court Order of September 26, 2007, on Plaintiff's Ex-Parte Motion to Show Cause Why Defendant Should Not Be Held in Contempt of Court; (3) Defendant's Motion for

Reconsideration of the Court's Oral Order to Vacate Defendant's Objection and Response to Plaintiff's Ex-parte Motion to Show Cause Why Defendant Should Not Be Held in Contempt of Court; Plaintiff's Motion for Contempt and for the Imposition of Sanctions Against Defendant and for an Award of Attorney's Fees; (4) Defendant's Countermotion for an Order to Show Cause Why Plaintiff Should Not Be Held in Contempt of Court for Deliberate and Willful Violation of Court Order(s) for Monthly Support; (5) Defendant's Countermotion to Strike Pursuant to NRCP 12(f) and Countermotion for Imposition of Sanctions Against Plaintiff; (6) Defendant's Countermotion for an Order.to Show Cause Why Plaintiff Should Not be Held in Contempt of Court for Deliberate and Willful Violation of Court Order(s) for Monthly Support; and (7) Plaintiff's Opposition and Countermotion for Sanctions Against Defendant in response t the foregoing Motions.

Plaintiff appeared in person and by and through his attorney, BRYCE C. DUCKWORTH, ESQ., of the law firm of SMITH, LARSEN & WIXOM. Defendant appeared in proper person. The Court, having reviewed the pleadings and paper on file herein, having heard oral argument, and good cause appearing therefore, enters the following Findings of Fact and Conclusions of Law:

(1) The Defendant has filed a Notice of Appeal of this Court's prior Order entered on September 26, 2007. Accordingly, this Court lacks jurisdiction to entertain the relief requested by way of Defendant's Motion for Reconsideration of the Court's Oral Order to Vacate Defendant's Objection and Response to Plaintiff's Ex-parte Motion to Show Cause Why Defendant Should Not Be Held in Contempt of Court; Plaintiff's Motion for Contempt and for the Imposition of Sanctions Against Defendant and for

an Award of Attorney's Fees. In this regard, those issues are the subject of an appeal, and the hearing scheduled for December 28, 2007, at 10:00 a.m., should be vacated.

(2) During the history of this litigation, the Defendant has filed numerous motions, frequently rearguing issues that previously were addressed by the Court. For the most part, Defendant's papers have been found to be non-meritorious or frivolous. Based on the frequency of her filing, as well as the nature of the issues raised in her papers, the Court finds the Defendant, VICTORIA LUGO-GIAMPA, to be a vexatious litigant.

(3) Defendant's Motion to Stay Judgment Pending Appeal lacks merit, and the same should be denied.

(4) Defendant's Countermotion for an Order to Show Cause Why Plaintiff Should Not Be Held in Contempt of Court for Deliberate and Willful Violation of Court Order(s) for Monthly Support lacks merit, and the same should be denied.

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the hearing currently set for December 28, 2007, at 10:00 a.m., should be, and hereby is, vacated. IT IS FURTHER ODERED that all pending hearing dates hereby are vacated by this Order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, based upon this Court's finding that Defendant, VICTORIA LUGO-GIAMPA, is a vexatious

litigant, the Defendant herby is restrained and prohibited from filing any further motions and/or papers with the Court without first obtaining permission from the Court to file a motion and/or paper. IT IS FURTHER ORDERED that the Defendant is sanctioned the sum and amount of $1,500 in attorney fees payable to the Plaintiff as and for her filing of her Motion to Stay Judgment Pending Appeal. IT IS FURTHER ORDERED that the orders pertaining to the finding that Defendant is a vexatious litigant and the enforcement of the award of attorney's fees are stayed during the pending appeal. In this regard, IT IS FURTHER ORDERED that Defendant must obtain the permission of the Court to file any future motions.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Stay Judgment Pending Appeal be, and the same hereby is, denied. In this regard, the Court noted there is an appeal pending and there does not appear to be any pending judgment against Defendant to which a stay would apply.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Countermotion for an Order to Show Cause Why Plaintiff Should Not Be Held in Contempt of Court for Deliberate and Willful Violation of Court Order(s) for Monthly Support be, and the same hereby is, denied.

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that the hearing on Defendant's Defendant's Motion for Reconsideration of the Court Order of September 26, 2007, on Plaintiff's Ex-Parte Motion to Show Cause Why Defendant Should Not Be Held in Contempt of Court; her Motion for Reconsideration of the Court's Oral Order to

Vacate Defendant's Objection and Response to Plaintiff's Ex-parte Motion to Show Cause Why Defendant Should Not Be Held in Contempt of Court; her Motion for Contempt and for the Imposition of Sanctions Against Defendant and for an Award of Attorney's Fees; and Defendant's Countermotion for an Order to Show Cause Why Plaintiff Should Not be Held in Contempt of Court for Deliberate and Willful Violation of Court Order(s) for Monthly Support, be, and the same hereby are, vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is to review and return the signed documents relative to the stock certificates to Plaintiff's counsel within seven days of the hearing hereon.

DATED this 6th day of March, 2008.

SANDRA L. POMRENZE
DISTRICT JUDGE

Submitted by:
SMITH, LARSEN & WIXOM

By BRYCE C. DUCKWORTH, ESQ.
Nevada Bar No. 004251
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: January 25, 2008

Tracie K. Lindeman
Clerk of Supreme Court

No. 50428

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order denying motions regarding custody matters, motions to strike, and motions to produce documents, and deferring judgment on motions regarding financial matters, in a case arising from a divorce. Eighth Judicial District Court, Family Court Division, Clark County; Sandra Pomrenze, Judge.

Our review of the documents transmitted to this court pursuant to NRAP 3(e) reveals jurisdictional defects. This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.[1] No statute or court rule authorizes an appeal from an order addressing motions to strike motions for sanctions, or motions regarding discovery.[2] In addition, while an order granting

[1] Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

[2] See NRAP 3A9b) (listing orders and judgments from which an appeal may be taken). To the extent that the challenged order resolves motions regarding custody of the children and could thus be viewed as a special order after final judgment and

or denying an NRCP 60(b) motion is generally appealable,[3] it appears that the district court has deferred ruling on all financial issues, which includes appellant's NRCP 60(b) motion. Once the district court enters a written order resolving the NRCP 60(b) motion, appellant, if aggrieved, may file an appeal from that order.[4] Accordingly, as we lack jurisdiction over this appeal[5], we

ORDER this appeal DISMISSED.

_____, J
Maupin

_____, J.
Cherry,

_____, J.
Saitta

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therefore appealable under Burton v. Burton, 99 Nev. 698, 669 P.2d 703 (1983), the denial of these motions would necessarily be summarily affirmed based on the district court's finding that the children are adults.

[3] See NRAP 3A(b)(2); Holiday Inn v. Barnett, 103 Nev. 60, 63, 732 P.2d 1376 (1987).

[4] It is unclear from the documents before this court what order appellant sought to challenge in her NRCP 60(b) motion. NRCP 60(b) only allows a party to seek relief from a final judgment, order, or proceeding. See Barry v. Lindner, 119 Nev. 661, 669, 81 P.3d 537, 542-43 (2003). If the motion was not directed at a final judgment, order, or proceeding, an NRCP 60(b) motion would not be proper and thus, while this court would have jurisdiction to consider an appeal from an order denying appellant's motion, a denial of that motion would necessarily be summarily affirmed on appeal.

[5] Appellant filed an amended notice of appeal on December 20, 2007, stating that she was appealing from oral orders entered by the district court. Appellant has not indicated what the oral orders she seeks to appeal from purport to rule on. As oral orders are not appealable, the amended notice of appeal does not cure the jurisdictional defects of this appeal. See Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987).

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND, THE HONORABLE SANDRA L. POMRENZE, DISTRICT JUDGE, FAMILY COURT DIVISION,

Respondents,

and

CHARLES F. GIAMPA,

Real Party in Interest.

FILED
January 15, 2008
Tracie K. Lindeman

No. 50370

ORDER DENYING REHEARING

Rehearing denied.[1]

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Cherry

_____, J.
Saitta

[1] NRAP 40(c).

Cc: Hon. Kathy A. Hardcastle, District Judge
Victoria Margaret Giampa
Smith Larsen & Wixom
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Appellant,

vs.

CHARLES F. GIAMPA,
Respondent.

FILED
December 12, 2007
Janette M. Bloom
Clerk of Supreme
Court
Supreme Court
No. 50428
District Court
No. 98 D224029
Due Date: 12/10/07

APPELLANT VICTORIA GIAMPA'S
CIVIL PROPER PERSON APPEAL STATEMENT

JUDGEMENT OR ORDER YOU ARE APPEALING:

FILED DATES: 9/26/07 and 10/2007 NAME ORDER: Oral and Oral Order

NOTICE OF APPEAL: August 28, 2007.
Related Cases: N/A

ISSUES ON APPEAL:
divorce temporary child custody/visitation
child/spousal support/arrears
non-modifiable settlement agreement
interest due
constitutional/due process violations
bankruptcy order sanctions

Appellant in proper person:

Victoria Giampa
1848 Wellington Court
Las Vegas, NV 89014
Appellant In Proper Person

Counsel for Respondent:
Bryce C. Duckworth
1935 Village Center Circle
Las Vegas, Nevada 89134

VICTORIA GIAMPA

On September 23, 1998, after a 21-year marriage, and after a brief hearing, the parties were granted a Decree of Divorce and where VICTORIA, a stay-at-home-mom, was granted primary physical custody of both minor children, MARCO and SARAH, who were adopted by the parties. CHARLES appeared by and through, Bryce C. Duckworth, Esq. who prepared the final Order. One year to the day, CHARLES was granted a reduction in visitation from (3) weeks down to (2) because of his heavy work schedule. VICTORIA believes that the Court did not reduce CHARLES' time but effectively and regrettably reduced the children's time with their father. From that time on, CHARLES did not exercise his right to overnight visitation for more than (5) years, did not follow the parenting plan, willfully withheld paying support, and refused to pay the monthly bill for the family vehicle causing it to be repossessed. VICTORIA and the (2) minor children were at times short on food and money for household expenses such as the mortgage payment and utility bills that were all seriously past due even though CHARLES has the ability to pay. Although there is no provision in the custody agreement for visitation with other family members, the disruption caused the children to be

separated from both parents for a period of (6) days during a traditional holiday which is unprecedented within the custody agreement. CHARLES' willful and malicious pattern and practice in not paying his support and bouncing checks forced VICTORIA on numerous occasions to file Motions For Order to Show Cause. However, just days before these scheduled motions CHARLES would purge his willful conduct and pay up his obligation. Five years later, when CHARLES began to exercise visitation, he made reservations in gaming casinos/hotels exposing the children to the greater physical risk of loitering pimps, prostitutes and their customers in the hallways. CHARLES allowed the parties' minor children to hang out alone at night after curfew and left it up to them to walk directly to school from these public places without parental supervision. Completely indifferent to their safety and welfare, Charles rents an apartment at the Country Club Towers at a cost of $1,500 per month, and took step by step effort to deliberately fool and deceive and purposefully mislead the Court into believing that he is living in the apartment with the children on a day- to-day basis. CHARLES motivations for a temporary change of custody was initiated in bad faith and should never have been rewarded a de facto change of custody which resulted in depriving the children of their need for stability, protection, and support and guidance in their education. Based on such willful conduct, the Court should have barred CHARLES from seeking custody under the doctrine of unclean hands. CHARLES, an insurance broker, began to rob and loot the community property estate by liquidating certain stock, forging VICTORIA'S name and stealing for himself and his attorney's fee for such ill-advice and ostensible legal representation the entire cash values from whole life insurance policies on the lives of

VICTORIA'S parents and children. The parties agreed to non-modifiable terms and conditions comprising the division and distribution of community property assets pursuant to the Non-Modifiable Property Settlement Agreement. The parties' Agreement has been approved, ratified and merged into the final Divorce Decree such that certain unmistakable terms and conditions of the Agreement called for CHARLES to pay VICTORIA her fair and equal community property share of the equity in the marital home and also required him to purchase or turn over certain real and personal property to VICTORIA. VICTORIA has discovered that the business, Chuck Giampa & Associates, Inc. is actually valued at $500,000.00 rather than the mere $272,000.00 that she and the Court had been misled and fraudulently induced into accepting as true by CHARLES. CHARLES did stipulate and agree and was Court Ordered to pay to VICTORIA $136,000.00, as and for, the purported community value in said business. However, another insurance brokerage business, Network Insurance Services, Inc. which was formed, organized and operating during the marriage was not disclosed, divided or any community equity distributed, and no community value has been assessed against this undisclosed business. When VICTORIA sought the Court's assistance in locating, dividing and distributing such community assets that CHARLES was in strict violation of leaving the children home alone and unsupervised without parental supervision, the Court imposed sanctions against her amounting to $14,350.00. Further, the parties did stipulate and agree to a non-modifiable sum of $5,300 per month for spousal support for a determined period of 11 years as well as making monthly payments of $2,400 pursuant to an Amortization Schedule for a Property Equalization Payment and

providing for Equalization Debt payments on an 11-year amortized payment plan at 9% interest. Pursuant to Nevada statute, VICTORIA is entitled to interest which shall be calculated from the date of the original judgment entered by the trial court. Prompted by bias and favor, the Court failed and refused to honor and uphold material assertions made during the divorce proceeding when at void dire on September 24, 1998, CHARLES promised not to seek any future reduction in agreed upon support payments to VICTORIA. CHARLES breached that stipulation and agreement made an Order of the Court with impunity when he sought, subject to bias and favor and obtained from the Court, an unlawful reduction in his monthly spousal obligation from $5300 per month to $3500 per month by unsubstantiated and false claims of loss of gross annual income.

TEMPORARY ORDER IS CONSTITUTIONALLY DEFECTIVE

VICTORIA believes that the Court's awarding of a temporary change of custody was arbitrary and unreasonable so as to constitute a substantive due process violation of her liberty interest in visitation with her children; that the nature of a temporary order and the remedies available to her to enforce any visitation with children living in their own apartment is constitutionally defective. The Court deprived VICTORIA of any parental involvement and resulted in being estranged and alienated from her children when they are in the greatest need of parental guidance and support. That it was insensitive to the delay in this case which deprived VICTORIA and her children a prompt resolution without conducting a hearing

or immediately entering a proper disposition, that it failed to place a termination date of the temporary order which left out any hope of a final determination to facilitate a continued and close relationship between VICTORIA and her children, that it never attempted to make any further orders to protect the children's physical and psychological well-being and the children's need for support and guidance in their need for an appropriate education, that it acted unreasonably, arbitrarily and unconscionably in denying VICTORIA relief to hold CHARLES in contempt and deliberately declined to enter a final order knowing full well that a temporary order for a change in custody would never be fully resolved given the age of the children. That the Court's continuance of procedural motions ultimately turned this temporary custody situation into an endless round of procedures with no possibility of vindication or ultimate success, and that it assisted CHARLES in rendering this case as moot. The Court ignored the magnitude and duration of the loss of visitation, deliberately overlooked the difficulties in trying to maintain contact, and failed to recognize how any visitation plan could possibly work; failed to consider the objective reasonableness of the claims and defenses asserted by VICTORIA and the reckless, willful, malicious, and illegal conduct of CHARLES and his counsel of record. VICTORIA contends the Court has jurisdiction and the power to make short-term, temporary adjustments to the parties' custody arrangement on an emergency basis to protect and safeguard her children's welfare, security and the children's need for guidance and supervision for an appropriate education when an appeal is pending. That the Court and the Nevada Supreme Court failed to do so. That the issues of custody and visitation are of continuing public interest and likely to recur because in dismissing her

emergency appeals, it had the effect of encouraging CHARLES' illegal snatching of the children. The Court failed to enforce its own Court Orders that the children are not to be left alone for more than (3) hours and failed to sanction CHARLES for contempt for violating such Orders when he made several out of town trips out of the jurisdiction and out the country. Clearly, CHARLES could not properly supervise or control the children's choice of friends, provide assistance regarding their hygiene and eating habits, nor could properly provide support and guidance with their education. CHARLES on each occasion failed and refused to provide VICTORIA with written notice of his jurisdictional absences despite lawful Court Orders requiring his compliance. He sold himself to the minor children by buying them expensive cars, cell phones, front row seats to concerts, giving them excessive pocket money, and more shocking, the unbridled freedom of aimless activity and unsupervised nighttime activity after curfew hours, exposure to harmful influences on the street, and the unfettered freedom to live unsupervised. VICTORIA filed emergency appeals to the Supreme Court and sought their help and was denied any relief.

TEMPORARY ORDER IS UNCONSTITUTIONAL IN DEPRIVING CHILDREN OF AN APPROPRIATE EDUCATION AS PREVIOUSLY ORDERED BY THE COURT –

VICTORIA contends that her due process rights were violated when the Court failed to protect her parental involvement in supporting and guiding her children's education. CHARLES' continuing lack of support and guidance in the children's education resulted in their

truancy, failing grades and withdrawing from school. Without VICTORIA'S knowledge and involvement, CHARLES continually acted against the best interest of the children when he withdrew them from school and enrolled them in an adult education program which resulted in the harm of Sarah not receiving a education from a traditional high school and Marco not receiving education from a Christian High School as previously Ordered by the Court. VICTORIA contends that this issue which is subject to change in the future is not necessarily moot. CHARLES' continual refusal to include VICTORIA in decisions regarding the children's education impaired their ability to fully develop the skills necessary to receive an appropriate education. Regarding the children's medical concerns: This is a particularly troubling violation because VICTORIA had no other source of information available to her. CHARLES' neglectful pattern and practice was in failing to give VICTORIA copies of the children's medical, dental and other important records and information about the children, names and addresses of the children's doctors, notification of the children's accidents and emergency medical care, the names of health care providers and their place of treatment. CHARLES' sworn affidavit lists the dates and times when he left the jurisdiction and traveled out of the country and left it up to two minor children to contact their mother which, of course, they never did. When VICTORIA came forward to oppose CHARLES' continuing violations, believing it is not in the best interests of the minor children, she had been unfairly and severely sanctioned by Judge Gloria Sanchez and ordered to pay hefty attorney fees amounting to over $14,000. VICTORIA believes that she is a victim and actually having suffered prejudice and retaliation from the Court for having come forward to

defend her right to protect and defend their minor children's statutory and constitutional rights. Other important factors that the Court failed to consider includes CHARLES' continuous failure to encourage the children to maintain and facilitate a continuing relationship with their mother and evidence of bias because of the lack of imposition of sanctions by the Court.

THE COURT: I mean, the main issue see to me is what has happened to these kids here, but now it's too late. It's unfortunate, but it is too late. And Marco is going to do what he's going to do and Sarah is going to go do what she's going to do. (Tr. Pg. 13/L21) Ma'am, I look at violations at the time they occurred. I don't look at them necessarily but I just want you to understand at this point in time I'm getting this case, which is now as I said, a multi-bucket case, so far from me being able to address those issues because, unfortunately now these children are close -- one's emancipated and the other one is going to emancipate in four weeks. There is really not much I can do to issue Orders to remedy how Marco may have been raised. Okay. It's just too late - it is - as a practical matter. And I want you to understand that that's too late. *Does that mean I cannot sanction a party for violating Orders?* (Tr. Pg. 16/L24)

EMANCIPATION -

VICTORIA challenges the Court's ruling that these children are emancipated simply because they attained the age of majority. Constitutional rights do not mature and come into being magically only when the children attains the state-

defined age of majority. The Court failed to balance or even appropriately recognize the children's liberty interests. At the time the Court issued its temporary Order, VICTORIA'S children were the ages of 15 and 16 and had no capacity to contract and argues that her children still has no capacity to contract for a rental agreement at the Country Club Towers because CHARLES still exercises legal control. CHARLES has the ability and pays for the parties' children rent, health insurance, and car insurance. A specified age of majority is not required by the children in order to assure them parental support and guidance while they attain their education.

PROCEDURAL DUE PROCESS RIGHTS VIOLATED -

The Court record in this case evidences a history of violation of due process that was ongoing and continuing and it failed to consider the present comfort and future well-being of the children as required by Statute. The Court withheld an imposition of sanctions against CHARLES when he failed and refused to cooperate with discovery concerning the safety and welfare of the children and other financial issues. VICTORIA filed an appeal but had been forced to withdraw it to obtain reasonable discovery in this case. Soon after, the Court withdrew its promise of granting discovery and directed VICTORIA to the discovery commissioner who thereafter imposed more sanctions against her for attempting to obtain reasonable discovery. VICTORIA filed a Motion for Correction and/or Clarification of the July 19, 2007 Court Minute Order Pursuant to NRCP 60(b) and sought, but has been unable for one reason or another, to obtain from Judge Pomrenze a Court Order for correction and/or clarification due to such clerical error affecting issues

to be argued and decided at the August 28, 2007 hearing. The Minute Order does not in any way identify or itemize the pending motions. Judge Pomrenze failed to act immediately to resolve any and all such clerical error on certain issues. The Court deprived VICTORIA of due process when it failed and refused to enter Orders but instead shows favoritism to CHARLES and counsel of record when it allows them to memorialize the relief they seek in Findings of Facts and Conclusions of Law.

On August 14, 2007, VICTORIA filed Motion For A Final Child Custody and Support Order to uphold and enforce any and all Court Orders for child custody and support relief that for one reason or another has been put on administrative hold. The Court improperly vacated VICTORIA'S pending motions. VICTORIA filed a Notice of Appeal and argues that the filing of the appeal in no way stays her interest in challenging CHARLES' contempt motion and for the Court to impose sanctions on CHARLES and his counsel of record. On November 8, 2007, the Court issued an Oral Order improperly vacating VICTORIA'S motions scheduled to be heard on November 13, 2007. VICTORIA has further cause for concern because the Court's file is deliberately and purposefully silent as to the Court's ability and/or willingness to entertain an imposition of sanctions against CHARLES even though the parties' children would have each attained the age of majority. CHARLES' contumacious conduct is material to any award of fees and sanctions in this case and he is not legally excused from paying support payments and other outstanding debt.

COURT'S ABANDONMENT OF STANDARD OF PROOF

The Court's failure to apply any standard in this case is inconsistent with due process for her desire for and right to the companionship, care, custody and management of VICTORIA's children which is an interest far more precious than any property right. The Court abandoned Victoria's evidence: a.) subpoenaed Country Club Towers' management company for a copy of CHARLES' rental agreement; b.) contacted Dr. Louis Mortillaro to appear and testify that it was important that the children live in the residence of either parent, not in a separate apartment; that the parties were to begin counseling, and that the children continue in a traditional high school setting; c.) subpoenaed the Metropolitan Police to appear and produce the well-checks evidencing that the children were left alone without parental supervision; d.) withdrew her appeal to obtain reasonable discovery; e.) subpoenaed Charles' cell phone records evidencing his parenting from a cell phone; f.) subpoenaed Charles' bank application evidencing his substantial assets and annual earnings of $500,000; g.) submitted Charles' sworn affidavit evidencing the time and dates when he left the jurisdiction leaving the children home alone without parental supervision; h.) submitted sworn affidavits from friends that the children were living home alone without parental supervision at the Country Club Towers; i.) submitted a letter from the Clark County Principal of Academic Studies regarding Marco's poor attitude and behavior; j.) submitted Dr. McCosh's evaluation of Marco and diagnosis of ADHD, a plan for medication, and the need for a high structured and individualized program to deal with his anger and behavioral problems; k.)

submitted Marco's and Sarah's report cards, disciplinary reports, progress and classroom behavior reports. The Court selected Dr. Louis Mortillaro as the psychologist to evaluate the family and the parties' minor children and to give his recommendations to the Court, and it failed to consider Dr. Mortillaro's evaluations that it is important that the children live in the residence of either parent, not in a separate apartment. The Court knowingly and willingly permitted a long passage of time to elapse since Dr. Mortillaro's evaluation with certainly no protections built in for implementing his recommendations which has been adversely interfered with which included: "a continuance with psychological counseling; an encouragement for the children to finish their girl scout and boy scout activities; a continuance of academics for Marco in a traditional high school until he graduates; and a continuance of academics for Sarah at a traditional high school where she can complete her course work under supervision and graduate." The Court knowingly and purposefully refused to sanction CHARLES for failing to seek mediation prior to bringing his motion for a change of physical custody in violation of EDCR 5.81; failed to Order that the case be transferred and heard by a visiting judge in the interest of justice; failed to determine that CHARLES was in contempt for leaving the children alone and without parental supervision; rejected VICTORIA'S claims that the children were left alone without parental supervision at the Country Club Towers which prevented her from maintaining any contact with her children as required by Nevada Statute; assisted CHARLES in an unfair deprivation of VICTORIA'S parental rights, failed to preserve and promote the welfare of her children, and deprived the children's right to an appropriate education as

previously Ordered by the Court. The Court made the determination that if VICTORIA had any concerns about the children's welfare that she should contact to Dr. Mortillaro to gain his assistance and to follow up on his evaluations of the children. After unsuccessfully protesting CHARLES' actions to Dr. Mortillaro, with no response, VICTORIA proceeded to file another Motion For Order To Show Cause where the Court again refused to find CHARLES in contempt in believing that the children were living alone without parental supervision.

MOOTNESS –

VICTORIA contends that the issue of mootness is not over since she and the children possess rights that are still being affected by the outcome of this proceeding. CHARLES' obligation for support has not been fulfilled where there is an amount past due and owing. Consequently, since the support money is still owing, all other pending issues, along with an imposition of sanctions on underlying issues, the children's need for an appropriate education, still presents a continuing live case or controversy that is neither moot nor nonjusticiable. VICTORIA argues that the Court can recognize an exception to the mootness doctrine when she would suffer collateral legal consequences from the present action and consequences if the actions being appealed were allowed to stand. CHARLES has not voluntarily stopped his willful and disobedient conduct in leaving the children alone without parental supervision and without support and guidance in their education. VICTORIA further contends the trial Court retains its common law equitable powers over matters relating to the welfare and education of the children to the extent consistent with the best interest of the

child standard in the State of Nevada. Nevada Statutes created a presumption in favor of the children receiving an education. The Court unilaterally ordering a temporary custody arrangement did not take into consideration how VICTORIA could possibly support and guide her children's education when the minor children were living alone without parental supervision separate and apart from both parents; did not take into consideration on what impact VICTORIA'S non-participation in the support and guidance of her children's education would have on their present and future right to an education. Truancy, suspension, and withdrawal from the children's respective schools work a sufficient deprivation of property and liberty interests to trigger the protections of the due process clause. The Court did not place any procedural safeguards to protect those rights. Clearly, VICTORIA's interest in supporting and guiding her children's education warranted greater protection than 15 and 17 year olds' limited interest in their desire to live in an apartment without any parental supervision. The Court made numerous procedural mistakes in its eagerness to protect CHARLES and his counsel of record and protecting the children's education as previously Ordered by the Court was not among them.

DUE PROCESS -

VICTORIA was denied due process because the Court issued its Order without making findings of fact and conclusions of law on her pending motions before Ordering the parties to proceed to arbitration. VICTORIA fears that the arbitrator may not follow the law correctly without an order from the Court initially resolving all pending underlying issues. An additional benefit to CHARLES and his counsel of record

and otherwise harm to VICTORIA is the Court erroneously ordering VICTORIA to pay for the cost of arbitration. VICTORIA argues that under the facts of this case there can be no determination by an arbitrator without the Court's findings of fact and conclusions of law that CHARLES and his counsel of record are in contempt of prior Court orders. To submit VICTORIA to arbitration without contempt orders having been initially considered and determined by the Court would deprive VICTORIA of the benefits of due process. VICTORIA believes that the Court has a duty to decide those underlying issues first. VICTORIA further contends that because the mooting of VICTORIA'S motion prevents her from seeking a determination that the Court's temporary order was incorrect on the merits, it would be inequitable to award fees to CHARLES. That in prior proceedings, CHARLES' response and opposition is legally insufficient and unable to sustain a viable objection, categorically frivolous and meritless all done to aid, facilitate and to perpetuate fraud upon the Court. The Court cannot act as an employment office for unemployed or under-employed attorneys. That mooting issues applies to the Court denying VICTORIA of her constitutional right to a determination of other existing equitable considerations and reward CHARLES and his counsel of record to evade review of the underlying issues enumerated in her pending motions. CHARLES' contumacious conduct stops for a time being, but he thereafter purges himself of such conduct and begins again - clearly demonstrating a repeated pattern and practice since the inception of the divorce decree. A real-life controversy between the parties with a personal stake in the outcome has and does continue to exist since it is illogically impossible to make the age of the children irrelevant in

terms of their need for an appropriate education in the future.

PUBLIC INTEREST/ STATUTE IS VAGUE/ EQUAL PROTECTION -

The Court interfered with VICTORIA'S obligation to limit her children's freedom, association and activity that is harmful to their welfare and best interests; interfered with VICTORIA'S obligation in seeing that they do not purchase alcohol or cigarettes, engage in dangerous casual sex, nor become truant from school. VICTORIA contends that the statute creates no criteria for determining the children's right to possess such limitless freedoms which she contends they do not possess without parental supervision and control, nor does it create any criteria for determining the children's right to expand any limitless freedoms without parental supervision and control and as such poses an issue of broad public interest that is likely to recur. The Court failed to use a reasonable cause test to determine whether or not VICTORIA'S children even have the right to possess such limitless freedoms. The Court ignored the fact that VICTORIA'S children are still children when they lack the maturity and a sense of responsibility, when they are susceptible to negative influences and peer pressure, when they lack the ability to foresee the future consequences of their behavior, and when they cannot legally contract. Family Court has demonstrated a custom and policy that amounts to a deliberate indifference to this class of individuals' right to possess such limitless freedoms, which belong only to mature and responsible adults. The Court is the moving force behind these constitutional violations against VICTORIA and unconstitutionally expanded these

limitless freedoms to her children over VICTORIA'S objection.

CERTIFICATE OF SERVICE

I, VICTORIA GIAMPA, CERTIFY THAT ON THE 10th DAY OF DECEMBER, 2007, I SERVED A COPY OF THIS COMPLETED CASE APPEAL STATEMENT BY MAILING IT U.S. POSTAGE, FIRST CLASS MAIL, POSTAGE PREPAID TO BRYCE C. DUCKWORTH, ESQ., 1935 VILLAGE CENTER CIRCLE, LAS VEGAS, NEVADA 89134.

DATED THIS 10TH DAY OF DECEMBER, 2007.

_____

VICTORIA GIAMPA

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND, THE HONORABLE SANDRA L. POMRENZE, DISTRICT JUDGE, FAMILY COURT DIVISION,

Respondents,

and

CHARLES F. GIAMPA,

Real Party in Interest.

FILED
November 13, 2007
Janette M. Bloom
Clerk of Supreme Curt
No. 50370

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This original proper person petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to disqualify a district court judge.

This court may issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an

arbitrary or capricious exercise of discretion.[1] A writ of prohibition may be issued to compel a district court to cease performing acts beyond its legal authority.[2] Neither mandamus nor prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law.[3] Because writs of mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within this court's discretion.[4]

A petition for a writ of mandamus is the appropriate vehicle to seek disqualification of a judge,[5] and disqualification is appropriate when a judge's impartiality might reasonably be questioned.[6] But the party seeking disqualification bears the burden to demonstrate that disqualification is warranted, and speculation is not sufficient. [7] Moreover, a judge has a duty to sit in the absence of disqualifying bias, and the judge's determination that he should not voluntarily disqualify himself is entitled to substantial weight.[8] Here, petition has not articulated any grounds for disqualification, except that the district judge ruled against her on some issues. This is insufficient

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[1] NRS 34.160; Washoe County Dist. Attorney v. Dist. Ct., 116 Nev. 629, 5 P.3d 562 (2000).
[2] NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).
[3] NRS 34.170; NRS 34.330.
[4] Barnes v. District Court, 103 Nev. 679, 748 P.2d 483 (1987).
[5] City of Sparks v. District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16 (1996).
[6] PETA v. Bobby Berosini, ltd., 111 Nev. 431, 894 P.2d 337 (1995).
[7] Id.
[8] Id.

to warrant disqualification.[9] Accordingly, we deny the petition.

It is so ORDERED.[10]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Kathy A. Hardcastle, District Judge
Victoria Margaret Giampa
Smith Larsen & Wixom
Eighth District Court Clerk

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[9] Id.

[10] Since the petition has been filed, we deny petitioner's October 18, 2007 motion for leave to file the petition as moot.

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and THE HONORABLE CHIEF JUDGE, KATHY A. HARDCASTLE, District Judge,

Respondent.

and

CHARLES F. GIAMPA,

Real Party In Interest.

FILED
October 15, 2007
Clerk of the Court
District Court
Case No: 98-D224029

Nevada Supreme
Court No.: 50370

Oral Argument Requested:
YES

PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION

COMES NOW, PETITIONER VICTORIA GIAMPA (hereinafter PETITIONER VICTORIA), In Pro Se, who hereby brings her PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION PURSUANT TO NRS 34.160. This Application for issuance of Writ relief is made based upon the following:

WHEREFORE, PETITIONER VICTORIA prays that this Honorable Nevada Supreme Court rule as follows:

1. issue a Writ of Mandamus commanding RESPONDENT HARDCASTLE, on or before December 1, 2007, or that the parties are to appear before this Court and show cause why RESPONDENT HARDCASTLE has not done so, and/or after hearing issue a Peremptory Writ of Mandamus commanding RESPONDENT HARDCASTLE to perform the foregoing request for relief to issue on or before November 30, 2007.

DATED this 15th day of OCTOBER, 2007.

By:
Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Pro Se

NOTICE OF HEARING

TO: CHIEF DISTRICT COURT JUDGE KATHY A. HARDCASTLE, RESPONDENT
TO: DISTRICT COURT JUDGE SANDRA L. POMRENZE
TO: CHARLES F. GIAMPA – PLAINTIFF, REAL PARTY IN INTEREST
TO: BRYCE C. DUCKWORTH, ESQ. – ATTORNEY FOR PLAINTIFF, REAL PARTY IN INTEREST

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION,** on for hearing before the Nevada Supreme Court, Carson City, Nevada on the ____day of _____, 2007, in Department No. __, at ___ _.m., or as soon thereafter as counsel can be heard.

DATED this 15th day of OCTOBER, 2007.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Defendant/Counterclaimant
In Pro Se

PRELIMINARY STATEMENT

A Writ of Mandamus is available to control an arbitrary or capricious exercise of discretion.

A Writ of Prohibition is available when a district Court acts without or in excess of its judgment.

FACTUAL STATEMENT

On September 23, 1998, after a 21-year marriage, and after a brief hearing, the parties, CHARLES F. GIAMPA, PLAINTIFF, (hereinafter PLAINTIFF GIAMPA) and VICTORIA GIAMPA, DEFENDANT, (hereinafter PETITIONER VICTORIA) were granted a Decree of Divorce where the parties were awarded joint legal custody and where PETITIONER VICTORIA, a stay-at-home-mom, was granted primary physical custody of both minor children, MARCO and SARAH, who were adopted by the parties. PETITIONER VICTORIA appeared in proper person, PLAINTIFF GIAMPA appeared, by and through, Bryce C. Duckworth, Esq. who prepared the final Order. One year to the day, PLAINTIFF GIAMPA appeared before Judge Steele and was granted a reduction in visitation from (3) weeks down to (2) because of his heavy work schedule. PETITIONER VICTORIA believes that the Court did not reduce PLAINTIFF GIAMPA'S time, but effectively and regrettably reduced the children's time with their father. From that time on, PLAINTIFF GIAMPA did not follow the parenting plan, nor did he exercise his right to overnight visitation for more than (5) years. PLAINTIFF GIAMPA even withheld paying support and deliberately failed to pay the monthly bill for the family vehicle, setting matters in motion causing the vehicle to be repossessed. Early in the

divorce proceedings, PETITIONER VICTORIA and the parties' (2) minor children were at times short on food and money for household expenses such as the mortgage payment and utility bills that were all seriously past due. PETITIONER VICTORIA'S belief is that PLAINTIFF GIAMPA'S motive in filing a motion in November 2004 and an order shortening time that resulted in her losing her visitation with the children during a previous Christmas holiday season was for the sole purpose of creating incident to promote a change of custody. The parties' children, with their juvenile judgment, were being bought by PLAINTIFF GIAMPA during a time when their desires for independence were at the forefront. PLAINTIFF GIAMPA then entices the parties' children with the prospect of renting their own apartment since the scheme to file for a change of physical custody was already set in motion deliberately provoking disruption and creating instability at time of visitation and desiring a 'sham swap' for stability and continuity in a change of physical custody when clearly PLAINTIFF GIAMPA'S habit and pattern was leaving them alone and without parental supervision on visitation and his busy schedule. Although there is no provision in the custody agreement for visitation with other family members, the disruption caused the children to be separated from both parents during a traditional holiday for a period of (6) days which was unprecedented within the custody agreement. The parties' irresponsible teenagers in essence have been rewarded by the court in their efforts at bad behavior. When PLAINTIFF GIAMPA began to exercise visitation and began overnight visitation with the minor children, he left the children alone and unsupervised in provocative gaming casinos/hotels, placing the children at a greater physical risk of harm. While at the same time PLAINTIFF

GIAMPA is remarried and is living in his current wife's home located at 2963 E. Viking Road, Las Vegas, Nevada, PLAINTIFF GIAMPA admits to and bemoans paying for his current wife's household expenses, but also pays for and sets up as yet a second household exclusively for the children at a cost of $1500 per month separate and apart from both parties. This apartment is located in the Country Club Towers. PLAINTIFF GIAMPA took step by step effort to fool and deceive this Court, by and through, counsel of record, to deliberately and purposefully mislead the Court into believing PLAINTIFF GIAMPA is living in the apartment with their children. PETITIONER VICTORIA has evidence sufficient to show that because of this living arrangement, the children live daily without the care and supervision of either parent. PLAINTIFF GIAMPA filed an Affidavit pursuant to Court Order listing times and places where he left the jurisdiction and leaving the children alone and unsupervised. The Court selected Dr. Louis Mortillaro as the psychologist to evaluate the family and the parties' minor children and to give his recommendation to the Court. He stated that it is important that the children live in the residence of either parent, not in a separate apartment. In violation of the Court's express orders prohibiting such neglectful conduct, including strict admonishment that PLAINTIFF GIAMPA not leave the children alone unsupervised overnight or for more than a couple hours, PLAINTIFF GIAMPA, completely indifferent to the children's safety and welfare, made several out of town trips out of the jurisdiction and out the country. Clearly PLAINTIFF GIAMPA could not properly supervise or control the children placing them at further risk of harm. PLAINTIFF GIAMPA on each occasion failed and refused to provide PETITIONER VICTORIA with written notice of his

jurisdictional absences despite lawful Court Order(s) requiring his compliance. District Court Judge was reluctant to enforce the Court Order(s) that the children are not to be left alone since she did not find PLAINTIFF GIAMPA in contempt for him violating the Court's previous order(s). PLAINTIFF GIAMPA has sold himself to the minor children by buying them expensive cars and cell phones, giving them excessive pocket money and the unbridled freedom to live unsupervised in their own high-rise apartment. PLAINTIFF GIAMPA did fail to seek mediation prior to commencing the instant litigation. Thereafter, PETITIONER VICTORIA sought relief from the Court to litigate the issue of emancipation and a change of physical custody. PLAINTIFF GIAMPA'S careless and fancy free attitude has resulted in both children having received six (6) unexcused absences from school; Sarah's scanned (6) weeks, and did not graduate academically on time. On the other hand, PETITIONER VICTORIA has evidence, corroborated by personal affidavits of family friends, written declarations from Police Officers from the Las Vegas Metropolitan Police Department who confirmed by well-checks that the children were indeed left alone and unsupervised in the Country Club Towers, and PLAINTIFF GIAMPA'S affidavit under oath listing dates and times when he left the jurisdiction and traveled out of the country. When PLAINTIFF GIAMPA left the jurisdiction, he left it up to two minor children to contact their mother, which of course they never did. PETITIONER VICTORIA does not believe that PLAINTIFF GIAMPA could ever meet the 2-part test for a physical custody change which applies when one parent has been previously awarded primary physical custody under Nevada Law. However, when PETITIONER VICTORIA came forward to oppose such change of physical

custody, believing it is not in the best interests of the minor children, she had been unfairly and severely sanctioned by District Court Judge and ordered to pay hefty attorney fees to counsel of record for PLAINTIFF GIAMPA. PETITIONER VICTORIA as a stay-at-home mom was not receiving other income in which to pay such sanctions except those monies already divided and decreed in the parties' Decree of Divorce. PETITIONER VICTORIA believes that she is a victim and actually having suffered prejudice and retaliation from the Court for having come forward to defend her right to due process of law attempting to protect and defend their minor children's statutory and constitutional rights. Other important factors for this Court to consider when determining to recuse and to reassign this case includes PLAINTIFF GIAMPA'S continuous failure to encourage the children to maintain and facilitate a continuing relationship with their mother and evidence of bias because of the lack of admonishment or sanctions by the Court. Meanwhile, PLAINTIFF GIAMPA early on in the divorce proceedings began to rob and loot the community property estate by liquidating certain stock and stealing the entire cash values from whole life insurance policies for himself and his attorney's fee for such ill-advice and ostensible legal representation. The parties agreed to non-modifiable terms and conditions comprising the division and distribution of community property assets pursuant to the Non-Modifiable Property Settlement Agreement. The parties' Agreement has been approved, ratified and merged into the final Divorce Decree such that certain unmistakable terms and conditions of the Agreement called for PLAINTIFF GIAMPA to pay PETITIONER VICTORIA her fair and equal community property share of the equity in the marital home located at 7168 Mira Vista, and also

required PLAINTIFF GIAMPA to purchase or turn over certain real and personal property for PETITIONER VICTORIA. PETITIONER VICTORIA, based upon information and belief, has discovered that the business, Chuck Giampa & Associates, Inc. is actually valued at $500,000.00 rather than the mere $272,000.00 that PETITIONER VICTORIA had been misled and fraudulently induced into accepting as true by PLAINTIFF GIAMPA. PLAINTIFF GIAMPA did stipulate and agree, and was Court Ordered, to pay to PETITIONER VICTORIA $136,000.00, as and for, the purported community value in said business. However, another insurance brokerage business, Network Insurance Services, Inc. which was formed, organized and operating during the marriage was not disclosed by PLAINTIFF GIAMPA, divided or any community equity distributed. No community value has been assessed against the undisclosed business known as Network Insurance Services, Inc. When PETITIONER VICTORIA sought this Court's assistance in locating, dividing and distributing such community assets, the Court imposed hefty financial sanctions against her. Further, the parties did stipulate and agree to a non-modifiable sum of $5,300 per month as and for spousal support for a determined period of 11 years, as well as PLAINTIFF GIAMPA making monthly
payments of $2,400 to PETITIONER VICTORIA pursuant to an Amortization Schedule for a Property Equalization Payment and providing for Equalization Debt payments on an eleven-year amortized payment plan at 9% interest. Prompted by bias and favor, the Court failed and refused to honor and uphold material assertions made during the divorce proceeding when at voir dire on September 24, 1998, PLAINTIFF GIAMPA promised not to seek any future

reduction in agreed upon support payments to PETITIONER VICTORIA. PLAINTIFF GIAMPA breached that stipulation and agreement made an Order of the Court with impunity when he sought, subject to bias and favor, and obtained from the Court an unlawful reduction in his monthly spousal obligation from $5300 per month to $3500 per month by unsubstantiated and false claims of loss of gross annual income. The Court did sanction PETITIONER VICTORIA but recently did withhold admonishment or imposition of sanctions against PLAINTIFF GIAMPA when he failed and refused to cooperate with discovery concerning the safety and welfare of the children and concerning financial issues evidencing bias and prompting this instant motion. PETITIONER VICTORIA filed an appeal before the Nevada Supreme Court but recently at a hearing before the Court had been forced to withdraw her appeal to obtain reasonable discovery in this case. Soon after PETITIONER VICTORIA withdrew her appeal, the Court withdrew her promise of granting discovery and directed PETITIONER VICTORIA to the discovery commissioner who then also proceeded to impose a #3,000.000 sanction against PETITIONER VICTORIA for attempting to obtain reasonable discovery. This case was reassigned a third time to another department. Again, PETITIONER VICTORIA had been threatened with new and additional sanctions. Clearly, the Court record in this case evidences a history of violation of due process that must not continue. PETITIONER VICTORIA having no other remedy at law other than to seek recusal of Judge Sandra L. Pomrenze for cause.

FACTUAL AND LEGAL ARGUMENT

(Points and Authorities)

1. PETITIONER VICTORIA alleges that she, as a party defendant to this domestic case, has been subject to unreasonable and unnecessary bias and prejudice and creating an appearance of impropriety by District Court Judge Sandra L. Pomrenze, (hereinafter RESPONDENT POMRENZE) violating PETITIONER VICTORIA'S right to due process directly and proximately causing substantial injury and harm to her. In this regard, this case No. 98D224029 should be reviewed by Chief District Court Judge Kathy K. Hardcastle (hereinafter RESPONDENT HARDCASTLE) for department reassignment and/or recusal of RESPONDENT POMRENZE for cause pursuant to EDCR 1.60 as follows:

(a) The chief judge shall have the authority to assign or reassign all cases pending in the district.

(d) Judges who disqualify themselves from hearing a case must direct the entry of an appropriate minute order for reassignment on a random basis.

(e) Under the supervision of the chief judge, the court administrator shall assign appropriate matters to available senior judges and visiting judges.

2. PETITIONER VICTORIA further alleges that statutory authority exists to support her claim for RESPONDENT HARDCASTLE to grant her instant motion

for case reassignment and/or recusal for cause should RESPONDENT POMRENZE refuse to disqualify and/or otherwise recuse herself from further involvement in these proceedings because several Judicial Canons appear to have been violated by RESPONDENT POMRENZE including, but not limited to, Canon 2 and Canon 3.

3. PETITIONER VICTORIA further alleges that RESPONDENT HARDCASTLE has the present ability to perform the above-described duty in the absence of a lack of asserted authority by the presiding family court judge. On the other hand, RESPONDENT HARDCASTLE regularly sits on the bench as Chief District Court Judge of the Eighth Judicial Circuit and is able to exercise sound and reasonable discretion in this matter pursuant to Rule 1.30.

4. PETITIONER VICTORIA seeks extraordinary relief for Writ of Mandamus pursuant to N.R.S. 34.150 to 34.310. PETITIONER VICTORIA, in the alternative seeks extraordinary relief by way of a Writ of Prohibition pursuant to N.R.S. 34.320 to 34.350

5. PETITIONER VICTORIA alleges that she has set forth sufficient facts by a preponderance of evidence that demonstrate she has established a prima facie case for the issuance of a Writ of Mandamus. The Court record in this case shows that she moves properly and quickly in these proceedings having filed the appropriate motion and supporting affidavits in her moving papers. She has exhausted her administrative remedies available and now seeks her sole remedy of a Writ of Mandamus. PETITIONER VICTORIA contends that RESPONDENT HARDCASTLE, while exercising her duties as Chief District

Court Judge, did not do what is required under the law. Generally, a Writ of Mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, NRS 34.160; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991), or to control an arbitrary or capricious exercise of discretion. Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

PETITIONER VICTORIA alleges that a Writ of Mandamus must issue here because PETITIONER VICTORIA has no other plain, speedy and adequate remedy in the ordinary course of law. Borger v. Dist. Ct., 120 Nev. 1021, 1025, 192 P.3d 600, 603 (2004). PETITIONER VICTORIA realizes that a Writ of Mandamus is an extraordinary remedy within the discretion of this Court to determine if her Petition will be considered; however, the Nevada Supreme Court has historically noted that a Petition for a Writ of Mandamus is the appropriate vehicle to seek disqualification of a judge. City of Sparks v. District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16.

6. PETITIONER VICTORIA had moved properly and quickly in prior proceedings. Travelers Ins. Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1410 (5th Cir.1994) (holding that party seeking disqualification must do so at the earliest moment after knowledge of facts demonstrating a basis for disqualification); U.S. v. Owens, 902 F.2d 1154, 1155 (4th Cir.1990) (stating that timeliness is an essential element of a recusal motion"). The Canons of Conduct rules require the absence of an appearance of impropriety. State ex rel. McNary v. Jones, 472 S.W.2d 637, 639-640 (Mo. App. 1971)

(no system of justice can function at its best where the litigant sincerely believes the Judge is biased).

On July 19, 2007, the sole hearing held before RESPONDENT POMRENZE in this post divorce case, No. 98-D224029, having recently been reassigned from another department. Child custody, financial and other issues were paramount to this hearing upon the following colloquy between the parties and the Court as follows:

> THE COURT: Court noted ongoing issues regarding the children, however, both children will have emancipated within a month, therefore, those issues will not be addressed. Court noted issues of arrearages and attorney's fees. Argument regarding request for continuance due to conflicting schedule of attorney Duckworth. Defendant recited her statement on the record.

7. Since then, PETITIONER VICTORIA had sought, but has been unable, for one reason or another, to obtain from RESPONDENT POMRENZE a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the August 28, 2007 hearing. PETITIONER VICTORIA had cause for concern as to which motions will be heard and to what extent at the hearing scheduled for August 28, 2007. The Minute Order did not in any way identify or itemize the pending motions. On July 19, 2007 hearing, counsel of record, appears confused and uncertain as to the issues or specific motions pending. PLAINTIFF GIAMPA has yet to answer some of the motions involved in these proceedings. PETITIONER VICTORIA contends that RESPONDENT POMRENZE

should immediately act to resolve any and all such clerical error and/or to clarify the July 19, 2007, Minute Court Order on certain issues but has refused and failed to act when necessary as follows:

> ...
> ATTORNEY DUCKWORTH: Quite frankly, I had lost track of the number of motions that were pending before the court at that time.
> THE COURT: There are 7 or 8.
> ATTORNEY DUCKWORTH: Right. I think there are 8; 7 or 8. I had identified 2 in my motion. I said "including the following two." I didn't say it was limited to those 2. I said including just to give the court some reference that I was aware of 2 of the motions that were pending. (Tr. P6/L16)

8. PETITIONER VICTORIA alleges that the language used by RESPONDENT POMRENZE in the July 19, 2007, Court Minute Order is facially and literally ambiguous and unreasonably subject to interpretation requiring immediate court intervention for correction and/or clarification in order to ensure compliance. In this regard, PETITIONER VICTORIA contends that NRCP 60(a) is generally used to cure all such clerical error and and/or clarification.

9. PETITIONER VICTORIA alleges that one matter before this Court involves a potential for an abuse of process because RESPONDENT POMRENZE refused to disqualify herself. This disqualification would prevent the random transfer of Case No. D224029 to another department. In this regard, PETITIONER VICTORIA alleges that there had been several pending motions before RESPONDENT POMRENZE and the Court who would refuse to hear and

decide. PETITIONER VICTORIA alleges that she has established a prima facie case for the issuance of a Writ of Prohibition because the District Court did act without or in excess of its jurisdiction. State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320. ct Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16.

On August 28, 2007, RESPONDENT POMRENZE did, without proper authority and for other than good cause, vacate certain hearing dates as follows:

> THE COURT: Any pending motions related to custody matters are denied as being moot.
>
> THE COURT: As to any other pending motions related to financial matters, rulings are deferred pending the parties making a genuine attempt to reach a resolution.
>
> THE COURT: Defendant's request for sanctions for Plaintiff's alleged violation of prior orders is denied.

10. PETITIONER VICTORIA contends that there are several unheard and unresolved motions that were listed in the PETITIONER VICTORIA'S Petition for Writ of Mandamus. On July 2, 2007, PETITIONER VICTORIA immediately attempted to resolve many, if not all, of these issues contained in the individual motions such that she filed an Ex-Parte Motion for an Order Shortening Time to hear her NRCP 60(a) Motion for Correction and/or Clarification of the July 19, 2007, Court Minute Order. RESPONDENT POMRENZE without comment or written

decision summarily denied her request to shorten time to hear these important issues prior to the scheduled August 28, 2007, hearing.

11. PETITIONER VICTORIA further alleges that there are several actual and Court Orders for relief requiring immediate attention that apparently were not acknowledged or enforced in any way by this Court that were listed in PETITIONER VICTORIA'S Writ of Mandamus.

12. PETITIONER VICTORIA alleges that she has reasonable cause for overall concern for the correct direction of this case because she has pled a prima facie case establishing fraud upon the court and, therefore, should be allowed her day in court, and to obtain the appropriate court Order(s). Given that the salutary purpose of NRCP 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party, PETITIONER VICTORIA should have been granted a hearing. Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987), and in light of the state's sound basic policy of resolving cases on their merits whenever possible. Kahn, 108 Nev. at 510, 835 P.2d at 793. PETITIONER VICTORIA contends that RESPONDENT POMRENZE'S 10-day return time for a conclusive damage amount is unreasonable under these facts and attendant circumstances. Generally, where a claim is fraudulently advanced and that fraud is so successful that the other party is not aware that he has a particular claim or defense, this may be a sufficient basis for equitable relief. Villalon, 70 Nev. at 471, 273 P.2d at 416; Savage v. Salzmann, 88 Nev. 193, 195, 495 P.2d 367, 368 (1972); Colby v. Colby, 78

Nev. 150, 153-154, 369 P.2d 1019, 1021 (1962). PETITIONER VICTORIA contends that, generally, reconsideration is proper if upon motion the court consents to the rehearing. Harvey's Wagonwheel, Inc. v. MacSween, 96 Nev. 106, 178 P.2d 380 (1947). State ex rel Copeland v. Woodbury, 17 Nev. 337, 39 P. 1906 (1883).

13. On August 1, 2007, PLAINTIFF GIAMPA filed his purported response and opposition to PETITIONER VICTORIA'S NRCP 60(b) motion seeking relief to conduct reasonable discovery and an evidentiary hearing. In this regard, RESPONDENT POMRENZE failed and refused to find that PLAINTIFF GIAMPA'S response does not even mention the motion or set forth a viable and sustainable objection to PETITIONER VICTORIA'S claim. In fact, RESPONDENT POMRENZE vacated all of PETITIONER VICTORIA'S pending motions without one single finding of fact or conclusion of law. PETITIONER VICTORIA sought to obtain the deposition of PLAINTIFF GIAMPA, in part, because during the divorce proceeding, at voir dire on September 24, 1998, PLAINTIFF GIAMPA promised not to seek any future reduction in agreed upon support payments to PETITIONER VICTORIA. PLAINTIFF GIAMPA breached a stipulation and agreement, made an order of the Court, when he sought and obtained an unlawful and unjustifiable reduction in his monthly spousal obligation to PETITIONER VICTORIA.

14. PETITIONER VICTORIA alleges that RESPONDENT POMRENZE would act to fail and refuse to protect PETITIONER VICTORIA'S property rights in the total equalization debt amount of $188,734.10 because PLAINTIFF GIAMPA'S figures do not reflect the 9% per

annum interest rate the parties have previously stipulated and agreed to and has been made part of the parties' Decree of Divorce issued on September 24, 1998,

15. PETITIONER VICTORIA alleges that factual evidence exists demonstrating RESPONDENT POMRENZE'S impermissible culpable conduct from the bench that gives rise to her claim of an appearance of impropriety and for other due process law violations. Richard v. Richard, 146 Vt. 286, 501 A.2d 1190, 1191 (1985) (although the ultimate test is whether the judge can decide the case impartially, a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. PETITIONER VICTORIA has further concern for RESPONDENT POMRENZE'S flagrant and carefree disregard of her argument in her motions and in open court concerning the integrity of counsel of record when on July 19, 2007, RESPONDENT POMRENZE, in open Court, states by implication of approval that Attorney Duckworth is categorically okay and a good attorney as follows:

> ...
> THE COURT: Do you want to tell me what a bad guy Mr. Duckworth is?
>
> DEFENDANT VICTORIA: No, no I'm not going to do that. I'm not going to do that.
>
> THE COURT: Then you have 2 minutes....
> (Tr. Pg. 15/L5)

16 In this regard, PETITIONER VICTORIA contends that no matter how well Attorney Duckworth may have performed in other cases that RESPONDENT POMRENZE

is familiar with but for Attorney Duckworth's fraudulent performance in this case, no claim for fraud upon the Court would be before this Court. RESPONDENT POMRENZE'S conduct demonstrating impartiality and appearance of impropriety contravenes the Canons of Judicial Conduct that absolutely require the absence of an appearance of impropriety. State ex rel. McNary v. Jones, 472 S.W.2d 637, 639-640 (Mo. App. 1971) (no system of justice can function at its best where the litigant sincerely believes the judge is biased). For example, PETITIONER VICTORIA has cause for concern because of RESPONDENT POMRENZE and the Court's apparent lack of fairness and disregard in ruling that the parties file a 10-page brief that by implication would not include a memorandum of points and authorities, or even an affidavit, as historically required by EDCR 2.20 and EDCR 2.21. PETITIONER VICTORIA contends that this approach by RESPONDENT POMRENZE unreasonably conflicts with published Court rules and relevant case law. PLAINTIFF GIAMPA'S then purported opposition and response must then be denied. Clearly, by Court direction, PLAINTIFF GIAMPA'S responsive papers would fall substantially below the pleading standard in this jurisdiction. The Court record in this case evidences that PLAINTIFF GIAMPA is represented by able counsel who knows better than to file frivolous and dilatory papers even upon invitation of the Court. Pau v. Yosemite Park and Curry Co., 928 F.2d 880, 885 (9th Cir. 1991) (litigants are, of course, entitled to have their case decided by a judge who can approach the facts in a detached, objective, and impartial fashion). PLAINTIFF GIAMPA'S responsive papers would then be fatally void of any points and authorities, categorically defective and legally insufficient. RESPONDENT POMRENZE'S decision conflicts with

relevant case law because it does not consider that neither attorneys nor parties are authorized to plead defenses that are not well grounded in fact or warranted by law. Buck v. Greyhound Lines, 105 Nev. 756, 783 P.2d 437 (1989).

At the June 19, 2007 hearing, PETITIONER VICTORIA inquired as to how the Court would resolve her NRCP 60(b) motion upon such alternative and suspect procedure specifically designed and put in action by RESPONDENT POMRENZE as follows:

> PETITIONER VICTORIA: Your Honor, what happens to the 60(b) Motion that I have before the Court and the other motions I have striking his papers as being -- what happens to those particular motions?
>
> THE COURT: They're listed in your brief, and you give me in a few short words what you think is done, has happened, and what you think the Court should do, and then I'll agree or disagree, ma'am....
> (Tr. Pg. 17/L18)

17. PETITIONER VICTORIA further contends that when RESPONDENT POMRENZE restricted PLAINTIFF GIAMPA to a one (1) page responsive brief that a controversy exists as to an appearance of impropriety. RESPONDENT POMRENZE'S conduct from the bench would give the impermissible appearance that PLAINTIFF GIAMPA would receive an impermissible expectation and that opposing counsel would be successful in defeating PETITIONER VICTORIA'S NRCP 60(b) motion even upon submitting a simple one (1) page response tantamount to a

scandalous pleading. United States v. Alabama, 828 F.2d 1532, 1540 (11th Cir. 1987) (the right to a fair trial before an impartial judge is a basic requirement of due process and thus guaranteed by the Constitution), cert. denied sub nom. PETITIONER VICTORIA contends that PLAINTIFF GIAMPA'S tainted, spoiled, and scandalous document should be stricken from the Court record for cause pursuant to NRCP 12(f).

18. For a second example, PETITIONER VICTORIA alleges that she has reasonable cause for concern because RESPONDENT POMRENZE ruled that the pre-hearing brief length not exceed ten (10) pages or that any responsive brief filed by PLAINTIFF GIAMPA should not exceed (1) page. PETITIONER VICTORIA is not certain as to whether or not RESPONDENT POMRENZE has sufficient jurisdiction and authority to summarily relax or prospectively waive published Court rules and pleading requirements according to local standards. RESPONDENT POMRENZE appears to have taken sides and/or having abused her discretion when exceeding her authority by relaxing the pleading standards in this instance. These parties have been in litigation for some time and are in mutual need of admissible proof of any claim or defense set forth in this case. EDCR 2.20 requires a memorandum of points and authorities.

19. PETITIONER VICTORIA takes issue with the NEVADA SUPREME COURT'S view of the following since it failed to take into consideration statutory duties and obligations towards the then minor children:

> "Petitioner has not articulated any grounds for disqualification, except that the district judge ruled against her on some issues."

PETITION VICTORIA, in bringing this motion, contends that RESPONDENT POMRENZE'S conduct clearly demonstrates bias when she failed and refused to act reasonably and responsibly towards the parties' then minor children.. NRS 125.480 required that the parties, this court, and RESPONDENT POMRENZE act at all times in the best interests of the then minor children. In the instant case, the parties and this Nevada Supreme Court, retain an interest in the children under the best interest of the children standard until the outcome of the appeal. PETITIONER VICTORIA contends that the statute created measures to respond to the risk of harm of the then minor children and ensured thc protection of the children's interest. Here, the Nevada Supreme Court did not overlook but rather turned a blind's eye to their constitutional duty in protecting the then minor children's welfare and depriving PETITIONER VICTORIA'S a relationship with the parties' children of love and duty in a family unit. PETITIONER VICTORIA brought forth concrete evidence and articulated with points and authorities that indeed PLAINTIF GIAMPA had left the children alone and unsupervised based on the preponderance of evidence standard. Throughout the entire temporary custody procedural proceedings, the district court never took steps to protect those interests, nor took steps to conduct an evidentiary hearing within a reasonable time. Time is of the essence involving the parties' then minor children, and this Court deprived the children by not resolving this temporary situation in a timely manner. In denying PETITIONER VICTORIA'S writ to recuse

RESPONDENT POMRENZE, the Nevada Supreme Court has essentially rewarded the Court's abuse of discretion, rewarded PLAINTIFF GIAMPA for his ongoing willful, disobedient and contumacious conduct, and essentially punishing PETITIONER VICTORIA again.

20. On AUGUST 28, 2007, RESPONDENT POMERANZE found that the Court could do nothing for her in terms of relief for past custody violations. RESPONDENT POMRENZE then switched to the issue of money damages. (See Trp. P8/14-19) However, previously RESPONDENT POMRENZE spoke on community property issues and about custody issues stating that the Court could sanction a party for custody violations post emancipation. (See Tr.Pg. 12/L2-7)

21. On August 28, 2007, PETITIONER VICTORIA attempted to argue for the lost value of community assets previously unrecovered. Specifically, the business known as Chuck Giampa & Associates, Inc. and Network Insurance Services, Inc. There also had been no adjudication for the division and distribution of the business known as Network Insurance Services, Inc. contained in the parties' Decree of Divorce. Upon timely notice to PLAINTIFF GIAMPA that such professional services had been sought and retained to aid in determining a reasonable value of such community property but that no cooperation to extend the 10-day requirement issued by RESPONDENT POMRENZE. Instead, on October 2nd, 2007, PLAINTIFF GIAMPA filed an Order to Show Cause Petition in order to further sanctions against PETITIONER VICTORIA or to otherwise diminish and harass or dispose of altogether PETITIONER

VICTORIA'S recent Court award for damages. (See Tr.Pg. 12/L8-22). (Tr.Pg. 12/L8-22)

22. PETITIONER VICTORIA also sought, but has been unable to obtain for unexplained reasons from RESPONDENT POMRENZE, a Court Order for correction and/or clarification stating that this Court reserves jurisdiction subsequent to the parties' minor son so attaining the age of majority on August 15, 2007, and to find cause to sanction PLAINTIFF GIAMPA for past Court Order violations involving custody and support issues. PETITIONER VICTORIA has expressed her concern about the need to quickly resolve these matters, particularly involving custody matters because PLAINTIFF GIAMPA did continue to take Marco out of the jurisdiction and out of the country, while Marco was still a minor. PLAINTIFF GIAMJPA knowingly and purposefully did so without first having notified PETITIONER VICTORIA, in writing, as required by Court Order.

23. On August 23, 2006, a deposition was scheduled, by PETITIONER VICTORIA, as and for PLAINTIFF GIAMPA to obtain testimony in this case, but that after reasonable and effective notice, he failed and refused to appear for said deposition.

24. PLAINTIFF GIAMPA at some point finally realized that he also had been tricked and duped, by counsel of record, Bryce C. Duckworth, Esq., of the law firm of Smith, Larsen & Wixom, because due to prior Court Order(s) PLAINTIFF GIAMPA could, in no way, not reduce his monthly support obligation to PETITIONER VICTORIA simply by a change of physical custody. PLAINTIFF

GIAMPA instead preferred to pay $1500 to rent an apartment at the Country Club Towers for the parties' two teenage children to live without parental supervision, rather than to pay his Court Ordered monthly support obligation to PETITIONER VICTORIA. PLAINTIFF GIAMPA presently lives with his current wife at another independent residential location separate and apart from the parties' then minor children who would reside without parental supervision at the Country Club Towers. PETITIONER VICTORIA has further cause for concern because RESPONDENT POMRENZE'S Minute Order is deliberately and purposefully silent as to the Court's ability and/or willingness to entertain an imposition of sanctions against PLAINTIFF GIAMPA even though the parties' then minor children would have each attained majority. Potashnick v. Port City Constr. Co., 609 F.2d 1101 (5th Cir. 1980) (a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street), reh'g denied. (See Tr. P. 3/L1)

> THE COURT: I mean, the main issue see to me is what has happened to these kids here, but now it's too late. It's unfortunate, but it is too late. And Marco is going to do what he's going to do and Sarah is going to go do what she's going to do. (Tr. Pg. 13/L21)

> THE COURT: Ma'am, I look at violations at the time they occurred. I don't look at them necessarily but I just want you to understand at this point in time I'm getting this case, which is now as I said, a multi-bucket case, so far from me being able to address those issues because, unfortunately now these

children are close -- one's emancipated and the other one is going to emancipate in four weeks. There is really not much I can do to issue Orders to remedy how Marco may have been raised. Okay. It's just too late - it is - as a practical matter. And I want you to understand that that's too late. Does that mean I cannot sanction a party for violating Orders? (Tr. Pg. 16/L24)

25. PETITIONER VICTORIA recently sought but so far is unable to obtain from RESPONDENT POMRENZE a Court Order for correction and/or clarification stating that this Court will uphold and enforce any and all Court Orders for relief that for one reason or another have been put on administrative hold. For example, PETITIONER VICTORIA has been deliberately and purposefully denied her monthly support from PLAINTIFF GIAMPA. PLAINTIFF GIAMPA is presently more than thirty (30) days late on his monthly support payments to PETITIONER VICTORIA. Based upon information and belief, PLAINTIFF GIAMPA has the present ability to pay his monthly support obligations to PETITIONER VICTORIA but for spite, vindictiveness and retaliation, PLAINTIFF GIAMPA fails and refuses to comply and obey such Court Order(s). (See VHS 15:49:30)

26. On February 27, 2007, the Court issued a final and conclusive but unexecuted determination on this issue of a stayed Wage Assignment. PETITIONER VICTORIA also sought to obtain correction and/or clarification of Court Order(s). She contends that because of RESPONDENT POMRENZE'S and the Court's apparent lack of due diligence, clearly PLAINTIFF GIAMPA has expressly

waived any and all potential controversy over the wage assignment issue and offered no objection to an immediate Court Order for a wage assignment against PLAINTIFF GIAMPA.

27. PETITIONER VICTORIA takes exception to RESPONDENT POMRENZE'S and the Court's apparent lack of partiality and the need for urgency towards her several motions made for the purpose of enforcing Court Order(s) for monthly support appears to impermissibly favor PLAINTIFF GIAMPA because she is not and has not been regularly receiving her monthly support payments from PLAINTIFF GIAMPA. PETITIONER VICTORIA sought, but has been unable, to obtain a Court Order for correction and/or clarification of any and all enforceable action to remedy such financial dilemma caused by PLAINTIFF GIAMPA, including but not limited to, scheduling a hearing date to quickly resolve such urgent circumstances.

28. On July 19, 2007, RESPONDENT POMRENZE would act in a very injurious and emotionally upsetting manner towards PETITIONER VICTORIA when she determined as follows:

> THE COURT: There is really not much I can do to issue order(s) to remedy how Marco may have been raised. Okay. It's just too late (expression of washing hands of a done matter). It is -- as a practical matter. And I want you to understand that that's too late. Does that mean I cannot sanction a party for violating Order(s)? (Tr. Pg. 16/L24)

29. PETITIONER VICTORIA was surprised and shocked by RESPONDENT POMRENZE'S attitude and demeanor towards her. RESPONDENT POMRENZE somehow blames PETITIONER VICTORIA for her exhaustive efforts to demonstrate to this Court the fraud committed by PLAINTIFF GIAMPA, by and through, counsel of record, in this case. The attorney fees she was Court ordered to pay were tenable. PETITIONER VICTORIA as a stay-at-home mom was not receiving other income in which to pay such sanctions except those monies already divided and decreed in the parties' Decree of Divorce.

30. PETITIONER VICTORIA recalls when she had been severely sanctioned having been deemed to have filed frivolous and otherwise legally insufficient papers before the Court. PLAINTIFF GIAMPA, and his counsel of record, then sought and obtained such hefty and severe sanctions against PETITIONER VICTORIA totaling $14,350.00 for coming forth to file motions to protect PETITIONER VICTORIA'S constitutional right to parent and protect the parties' children.

31. PETITIONER VICTORIA sought, but for some unexplained reason, was unable to obtain from RESPONDENT POMRENZE and the Court a Court Order for correction and/or clarification of the deadline date established by the Court for the parties to file and exchange a copy of their respective AFCs (Affidavits of Financial Condition). The July 19, 2007, Court Minute Order confirms such Order. (Tr.Pg. 18/L5)

32. On July 24, 2007, PETITIONER VICTORIA diligently complied with the bench ruling and filed her AFC.

PLAINTIFF GIAMPA did not file his AFC until August 8, 2007, 16 days late. PETITIONER VICTORIA contends that RESPONDENT POMRENZE abused her discretion when ruling that the parties do not have to submit federal tax returns. The issue of PLAINTIFF GIAMPA submitting a copy of his federal tax returns has been an unexplained and unresolved material issue in this case for a long time. PETITIONER VICTORIA has ample reason to dispute PLAINTIFF GIAMPA'S AFC due to a history of fraudulent or incomplete AFC's.
(Tr. Pg. 22/ L1-13)

33. PETITIONER VICTORIA alleges that she has reasonable cause for concern for RESPONDENT POMRENZE'S apparent impropriety demonstrates a flagrant and carefree disregard of her several motions scheduled to be heard on July 24, 2007. In the past PETITIONER VICTORIA has had difficulty in receiving copies of PLAINTIFF GIAMPA'S federal tax returns when financial issues were involved. PLAINTIFF GIAMPA even admits to such delinquent status pertaining to his monthly support obligation.
(Tr. Pg. 21; L13)

34. PETITIONER VICTORIA, by way of appropriate motion, sought but was unable to obtain from RESPONDENT POMRENZE and the Court a correction and/or clarification of Court Order(s) and a formal written Minute Order signed by the Court pertaining to the July 19, 2007, hearing. State v. Bell, 34 Wash. 185, 75 P. 641; Hanley v. Most, 9 Wash.2d 429, 115 P.2d 951, 118 P.2d 946; 34 C.J. 506, 64; 21 C.J.S., Courts, § 226, p. 421. PETITIONER VICTORIA is concerned and seeks

clarification because on July 19, 2007, the Court ruled as follows:

> THE COURT: No Order is required from today, the Minutes will stand as the Order.

35. In this regard, RESPONDENT POMRENZE'S and the NEVADA SUPREME COURT'S ruling appears slanted and shows bias and/or prejudiced when she contends that an Oral Bench Order is sufficient, relying on language in this court's recent opinion in State, Division of Child & Family Services v. District Court, 120 Nev. 445, 92 P.3d 1239 (2004). In that case, the Nevada Supreme Court considered when a district court's Oral Order must be written, signed and filed before becoming effective. The phrase "enter an order" could mean entry of a written order, or it could mean entry of the court clerk's minutes of the district court's oral decision. Thus, the phrase is ambiguous. Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003); State, Dep't Mtr. Vehicles v. Vezeris, 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986).

36. PETITIONER VICTORIA takes further exception to such Court Minute Order and sought but has been unable to obtain from RESPONDENT POMRENZE and the Court a Court Order for correction and/or clarification of the July 19, 2007, Minute Order because it indicates that counsel of record, Bryce C. Duckworth, Esq. is from the law firm Dickerson & Dickerson, Consul & Pocker, rather than the law firm of Smith, Larsen & Wixom. This had been an issue in prior proceedings that Attorney Duckworth should have

put to rest. In those proceedings, Attorney Duckworth did not state why another attorney from his law office could not make an appearance to obtain a continuation of a hearing date. Instead, Attorney Duckworth defends upon an overall claim of oversight. The facts establish that on numerous occasions Attorney Duckworth has deliberately and purposefully inserted his former law firm's name in moving papers, then refuses to correct the Court record, in an underhanded attempt to gain favoritism from this Court, creating and furthering an impermissible appearance of impropriety that RESPONDENT POMRENZE has yet to denounce. Holt v. KMI Continental, Inc., 821 F. Supp. 846, 848 (D. Conn. 1993) ("perceptions to a pro se plaintiff are often as significant, or even more so, than the reality"). PETITIONER VICTORIA alleges that she has met the standard for assessing judicial bias in this jurisdiction, that "whether a reasonable person, knowing all the facts, would harbor reasonable doubts about a judge's impartiality. PETA v. Bobby Berosini, Ltd., 111 Nev. 431, 438, 894 P.2d 337, 341 (1995). Richard E. Flamm, Judicial Disqualification 5.5 (1996). At hearing Attorney Duckworth attempts to defend as follows:

37. PETITIONER VICTORIA has further cause for concern of the substance and procedural significance of the July 19, 2007, Court Minute Order. Generally, the Nevada Rules of Appellate Procedure deem a Minute Order a nonappealable Order. PETITIONER VICTORIA sought to exhaust her administrative remedies to obtain from RESPONDENT POMRENZE a Court Order for correction and/or clarification of the outstanding issues regularly contained in a formal written and signed Court Order. PETITIONER VICTORIA, in proper person, contends that

due process was never thought to require that she be law tainted or an administrative law clerk. However, PETITIONER VICTORIA contends that once RESPONDENT POMRENZE failed to file an appealable Order, the burden shifted to the Nevada Supreme Court to control the District Court's arbitrary or capricious abuse of discretion and immediately Order RESPONDENT POMRENZE to submit findings of facts and conclusions of law written in an appealable Order. Although PETITIONER VICTORIA provided points and authorities and has articulated a clear and convincing argument, the Nevada Supreme Court has imposed unnecessary procedural obstacles for PETITIONER VICTORIA designed only to further undermine the best interest of the children standard, further the fraudulent interests of PLAINTIFF GIAMPA and his counsel of record, and burden PETITIONER VICTORIA with court costs. PETITIONER VICTORIA contends that she has done nothing wrong, having committed no procedural error. There is no existing genuine basis in fact for this Court to find to determine to punish PETITIONER VICTORIA any further in these proceedings. Stedtheld v. State, 114 Idaho 273, 755 P.2d 1311, 1314 (1988) (to show a violation of due process, the petitioner must demonstrate the judge's vindictiveness or intent to punish him for exercising his rights).

38. PETITIONER VICTORIA further contends that denying PETITIONER VICTORIA'S motion will only reward PLAINTIFF GIAMPA'S request for attorney fees and/or sanctions should be denied. This Court cannot act as an employment office for unemployed or under-employed attorneys. Generally, an award of attorney's fees lies within the District Court's discretion, but a court may not

award attorney fees absent authority under a specific rule or statute. Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 993, 860 P.2d 720, 722 (1993). PETITIONER VICTORIA further contends that PLAINTIFF GIAMPA'S response and opposition is legally insufficient and unable to sustain a viable objection in these proceedings. PLAINTIFF GIAMPA'S responsive papers are categorically frivolous and meritless all done to aid, facilitate and to perpetuate fraud upon the Court. NRCP 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party," Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987). NRS 18.010(2)(b) provides, in pertinent part, that a District Court may award attorney fees to a prevailing party when the court finds that a claim was brought without reasonable ground or to harass the prevailing party. Duff v. Foster, 110 Nev. 1306, 1308-09, 885P.2d 589, 591-92 (1994) (concluding that the proper inquiry under NRS 18.010(2)(b) is whether the claim was brought without reasonable grounds), overruled on other grounds by Halbrook v. Halbrook, 114 Nev. 1455, 971 P.2d 1262 (1998). Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 26, 866 P.2d 382, 385 (1990) (determining that, where the law was not free from doubt and a complaint presented complex legal questions concerning statutory interpretation and legislative intent, the District Court abused its discretion in awarding attorney fees on the basis of NRS 18.010 (2)(b)); Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 995, 860 P.2d 720, 724 91993) (noting that an award made in clear disregard of guiding legal principles may constitute an abuse of discretion). PETITIONER VICTORIA has cause for concern because RESPONDENT POMRENZE displayed bias and personal animus towards her on several occasions having essentially

and constructively threatened her from the bench affecting due process of law as follows:

> ...
> THE COURT: Don't paper me, ma'am. Just understand something. Don't paper me with a bunch of motions and a bunch of replies. And I will admonish you again, and I know you've received this admonishment before, but guess what? I take it seriously.... (Tr. Pg. 20; L12)

39. On August 28, 2007, PETITIONER VICTORIA was made by RESPONDENT POMRENZE to feel belittled and humiliated when refusing to allow her to query the Court as follows and further refuse to address the lack of supervision under the best interest of the children standard. (Tr.Pg. 21/L17-24)

40. On AUGUST 28, 2007, RESPONDENT POMRENZE would act to violate PETITIO7NER'S right to due process when disallowing a Court return date or any other remaining avenue by vacating her numerous motions where PETITIONER VICTORIA could obtain relief from the Court. (Tr.P.25/L14-19)

41. PETITIONER VICTORIA contends that she has met the substantive standard for recusal is "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." United States v. Hernandez, 109 F.3d 1450, 1453 (9th Cir.1997). Accordingly, this case should be administratively transferred to another department or that RESPONDENT POMRENZE should be disqualified from

further participation in the proceedings involving this case and subject to a Court Order for recusal for cause.

42. PETITIONER VICTORIA contends that the Nevada Supreme Court overlooked and denied PETITIONER VICTORIA'S constitutional right to a determination of other existing equitable considerations which would allow PLAINTIFF GIAMPA and his counsel of record, to evade review of the following issues:

1. contempt for his continuous and contumacious violations of previous Court Orders in leaving the minor children home alone and unsupervised in a third and separate residence, at the Country Club Towers, affecting their safety and welfare;

2. contempt for violating previous Court Orders in depriving the then minor children an education at a Christian school;

3. contempt for his continuous and repeated violations of previous Court Orders to make best efforts at paying arrears;

4. contempt for his willful and deliberate culpable acts constituting fraud upon the Court pursuant to NRCP 60(b);

5. a Court Order finding that PETITIONER is entitled to relief of judgment pursuant to NRCP 60(b);

6. a Court Order enforcing PLAINTIFF GIAMPA'S monthly obligation to pay to PETITIONER VICTORIA equalization debt/spousal support arrears in the amount

of $1,220 per month pursuant to a Court Order dated May 9, 2003;

7. a Court Order reinstating PLAINTIFF GIAMPA'S original monthly obligation for spousal support to PETITIONER VICTORIA from $3,500 to $5,200;

8. a judgment and Court Order enforcing the Confession of Judgment stating a $10,000 sanction for each and every occasion PLAINTIFF GIAMPA was more than thirty (30) days late in paying support pursuant to the Confession of Judgment dated May 9, 2003;

9. a Court Order for the imposition of commensurate sanctions against PLAINTIFF GIAMPA immediately due and payable to PETITIONER VICTORIA for all such contempt;

10. a Court Order reducing to judgment against PLAINTIFF GIAMPA and any and all support arrearages and monetary sanctions to PETITIONER VICTORIA;

11. Court Order denying PLAINTIFF GIAMPA'S claim for such attorney fees from PETITIONER VICTORIA and is subject to the general rule which is that an attorney's neglect will be imputed to his client and he is held responsible for it. There is absolutely no basis in fact or law that this Court could find to determine to punish PETITIONER VICTORIA in any further proceedings;

12. providing PETITIONER VICTORIA compensation for a returned check for insufficient funds in payment for support payments;

13. contempt for deliberately delaying mail from PLAINTIFF GIAMPA'S counsel of record to PETITIONER VICTORIA;

14. contempt for deliberately untimely filing PLAINTIFF GIAMPA'S motion in limine.

43. PETITIONER VICTORIA alleges that RESPONDENT POMRENZE would act again to fail and refuse to protect PETITIONER VICTORIA'S property rights when she made an Oral Order vacating PETITIONER VICTORIA'S Countermotion for Contempt scheduled for November 13, 2007. PETITIONER VICTORIA argues that although she filed an appeal, this Court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed Order, matters that in no way affect the appeal's merit. Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987). This Court does have jurisdiction to consider the portion of PETITIONER VICTORIA'S motion concerning contempt because the district court has the power to enforce custody provisions pending appeal, that issue is collateral to the issues before this court on appeal from the divorce decree. Most v. Most, 477 A.2d 250, 263 (Me.1984) recognizing that a lower court may enforce custody provisions pending appeal. Wolfe v. Wolfe, 67 N.C.App. 753, 314 S.E.2d 132, 133 (1984) providing that a trial court has contempt power while an appeal is pending. PETITIONER VICTORIA'S filing of the appeal in no way stays her interest in challenging PLAINTIFF GIAMPA'S contempt motion and for this Court to impose sanctions on PLAINTIFF GIAMPA

and his counsel of record. This controversy demands reconsideration by this Court.

44. PETITIONER VICTORIA has cause for concern because the Court's record is deliberately and purposefully silent as to this Court's written Court Order vacating PETITIONER VICTORIA'S Countermotion for Sanctions scheduled for November 13, 2007. PETITIONER VICTORIA has further cause for concern of the substance and procedural significance of the Court's Oral Order vacating PETITIONER VICTORIA'S Countermotion for Sanctions scheduled for November 13, 2007. Generally, the Nevada Supreme Court deems an Oral Order a nonappealable Order.

CONCLUSION

Based upon the above and foregoing factual and legal argument, PETITIONER VICTORIA has again demonstrated that she is entitled to have this Court grant her writ and commensurate relief prayed for. That in granting her motion, it would also permit due process to be granted to PETITIONER VICTORIA, with an adjudication of contumacious contempt on the part of PLAINTIFF GIAMPA and his counsel of record and denying any award of undeserving attorney fees and sanctions.

ORDR

BRYCE C. DUCKWORTH, ESQ.
Nevada Bar No. 004251
SMITH, LARSEN & WIXOM
1935 Village Center Circle
Las Vegas, Nevada 89134
(702) 252-5002
Attorneys for Plaintiff/Counterdefendant

FILED
September 26, 2007
Clerk of the Court

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

CHARLES FRANK GIAMPA, Plaintiff/Counterdefendant,	)
v.	) CASE NO. 98D224029
VICTORIA MARGARET LUGO-GIAMPA,	) DEPT. NO. E
Defendant/Counterclaimant.	) Date of Hearing: 8/28/07) Time of Hearing: 11:00

ORDER

This matter came on for hearing before the above-entitled Court on (1) Defendant's Motion for Correction and/or Clarification of the July 19, 2007 Court Minute Order Pursuant to NRCP 60(a); (2) Defendant's Motion to Strike Plaintiff's Reply to Plaintiff's Reply and Opposition to Defendant's Application for an Order to Show Cause Why Plaintiff Should Not Be Held in Willful and Deliberate

Contempt for Failure to Make Timely Monthly Support Payments, and to Reduce Support Arrears to Judgment, and for Imposition of a Wage Assignment, and for Sanctions Against Plaintiff; (3) Defendant's Motion to Strike Plaintiff's Reply to Defendant's Reply to Plaintiff's Countermotion for Finding Defendant to be a Vexatious Litigant; Countermotion for the Imposition of Sanctions Against Defendant and for Reimbursement of Attorney's Fees to Plaintiff; (4) Defendant's Motion to Consolidate Hearing Dates; (5) Defendant's Motion for Order to Show Cause, Reduce Arrears to Judgment, Wage Assignment, Sanctions; (6) Defendant's Motion for Discovery and Evidentiary Hearing; Motion to Reinstate and to Enforce Support Obligations and to Reduce Support Arrears with Interest to Judgment; and Motion for Ex Parte Order for Wage Assignment and Motion for Imposition of Sanctions Immediately Due and Payable Against Plaintiff; (7) Defendant's Application for an Order to Show Cause Why Plaintiff Should Not Be Held in Willful and Deliberate Contempt of Court for Failure to Make Timely Monthly Support Payments, and t Reduce Support Arrears to Judgment, and for Imposition of a Wage Assignment, and for Sanctions Against Plaintiff; (8) Defendant's Motion for Relief from Judgment Due to a History of Facts and Attendant Circumstances Evidencing Plaintiff's Fraud Upon the Court Pursuant to NRCP 60(b); (9) Defendant's Amended Motion to Strike Pursuant to NRCP 12(f) and Motion for Imposition of Sanctions Against Plaintiff Immediately Due and Payable to Defendant; and (10) Plaintiff's Oppositions and Countermotions for Sanctions and Attorney's Fees in response to foregoing Motions. Plaintiff appeared in person and by and through his attorney, BRYCE C. DUCKWORTH, ESQ., of the law firm

of SMITH, LARSEN & WIXOM. Defendant appeared in proper person. The Court, having reviewed the pleadings and papers on file herein, having heard oral argument, having noted its concerns regarding Defendant's overuse of the judicial system as a forum for venting (as Defendant continues to raise issues which have been previously ruled on and/or are moot, both children are emancipated and this is a nine-year old divorce), and good cause appearing therefore, enters the following Orders:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant is to prepare a two-page itemized list of the sums she is seeking and the justification for each item, and present the list to Attorney Duckworth within ten (10 calendar days from today (i.e., within ten (10) calendar days of august 28, 2007). IT IS FURTHER ORDERED that such list is not to be filed with the Court. IT IS FURTHER ORDERED that Attorney Duckworth is then to confer with Defendant regarding the items. If Plaintiff accepts Defendant's request or a compromised amount as a means to resolve all outstanding issues, the agreed upon sum is to be paid to Defendant within sixty days by way of cashier's check, she is to sign such documents as may be presented by Attorney Duckworth in order to close the case. IT IS FURTHER ORDERED that if Defendant fails to timely provide the itemized justification, the Court will impose appropriate sanctions against Defendant. IT IS FURTHER ORDERERD that, if the parties are unable to reach a mutual resolution, the Court will refer the parties for private mediation and will assess the cost to Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's request for sanctions for Plaintiff's alleged violation of prior orders is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's request for Plaintiff to provide evidence of payments is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any pending motions related to custody matters are denied as being moot.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to any other pending motions related to financial matters, rulings are deferring pending the parties making a genuine attempt to reach a resolution.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the hearing currently scheduled for September 28, 207, at 10:00 a.m., is vacated. IT IS FURTHER ORDERED that the hearing currently scheduled for October 2, 2007, at 10:00 a.m., is vacated. IT IS FURTHER ORDERED that the hearing currently scheduled for October 9, 2007, at 11:00 a.m., is vacated.

DATED this 21st day of September, 2007.

Sandra L. Pomrenze
DISTRICT JUDGE

Submitted by:
SMITH, LARSEN & WIXOM
By BRYCE C. DUCKWORTH, ESQ.
Nevada Bar No. 004251
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: March 9, 2007
Janette M. Bloom
Clerk of Supreme Court
No. 48683

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order granting continuances of various hearings. Eighth Judicial District Court, Family Court Division, Clark County; Gloria S. Sanchez, Judge.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.[1] No statute or court rule authorizes an appeal from an order granting a request for a continuance.[2]

[1] Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).
[2] See NRAP 3A(b) (listing orders and judgments from which an appeal may be taken).

ORDER this appeal DISMISSED.[3]

_____, J.
Gibbons

_____, J.
Douglas

_____, J.
Cherry

cc: Hon. Gloria S. Sanchez, District Judge,
Family Court Division, Victoria Margaret Giampa,
Smith Larsen & Wixom, Eighth District Court Clerk

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[3] We note that appellant's failure to file her civil proper person appeal statement constitutes an independent basis for dismissing this appeal. See ADKT No. 385 (Order Establishing Pilot Program in Civil Appeals, June 10, 205), Exhibit A (Instructions for Civil Litigants Without Attorneys). See also ADKT No. 385 (Order Extending Pilot Program for Civil Proper Person Appeals, May 10, 2006) (extending the pilot program for civil appeals, which was scheduled to conclude on June 13, 2006, until further order of this court).

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: August 17, 2006
Janette M. Bloom
Clerk of Supreme Court
Supreme Court No. 47270

District Court No. D224029

NOTICE TO WITHDRAW APPEAL

I, Victoria Giampa, In Proper Person, hereby moves to voluntarily withdraw the appeal mentioned above.

I, VICTORIA GIAMPA, Appellant in Proper Person is aware of the legal effects and consequences of this voluntary withdrawal of this appeal including that VICTORIA GIAMPA cannot hereafter seek to reinstate this appeal and that any issues that were or could have been brought in this appeal are forever waived. Having been so informed, VICTORIA GIAMP, hereby consents to a voluntary dismissal of the above-mentioned appeal

DATED this 14th day of AUGUST, 2006.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027

CERTIFICATE OF SERVICE

I, certify that on the 14th day of August, I served a copy of NOTICE OF WITHDRAWAL OF APPEAL TO THE SUPREME COURT OF THE STATE OF NEVADA, upon the following address:

Bryce Duckworth
1935 Village Center Circle
Las Vegas, Nevada 89134

Victoria Giampa
Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: March 28, 2006
Janette M. Bloom
Clerk of Supreme Court
No. 51422

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order concerning temporary child custody and support. Eighth Judicial District Court, Family Court Division, Clark County; Gloria S. Sanchez, Judge.

Our review of the documents before this court reveals a jurisdictional defect. Specifically, the September 29, 2005 order concerning the child custody and support arrangements ostensibly is not substantively appealable because it does not appear to have finally altered custody or modified support.[1] Instead, the September 2005 order "temporarily" modified the arrangement for custody of the children and reduced respondent's child support obligation to $500 total per month. The September order also directed the parties to submit certain evidence to the court and to appear, with the children, before a psychological expert for evaluations and for recommendations as to custody and visitation, in anticipation for a future evidentiary hearing on those issues. Thus, the order does not finally resolve the

[1] NRAP 3A(b)(2).

parties' various motions and countermotions to modify custody.

Accordingly, the order is not appealable because it is subject to review and modification by the district court.[2] Further, although it appears that a hearing was scheduled for January 18, 2006, appellant has not notified this court of any written order finally resolving the custody or any support issues. Once the district court enters a written order resolving these issues, appellant may appeal if she is aggrieved.[3]

ORDER this appeal DISMISSED.

_____, J.
Maupin

_____, J.
Gibbons

_____, J.
Hardesty

cc: Hon. Gloria S. Sanchez, District Judge,
Family Court Division, Victoria Margaret Giampa,
Smith Larsen & Wixom, Clark County Clerk

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[2] See In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989) (holding that no appeal may be taken from a temporary order subject to periodic mandatory review and modification by the court).

[3] See NRAP 3A(a); NRAP 4(a).

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: December 22, 2005
December 22, 2005
Janette M. Bloom
Clerk of Supreme Court
Supreme Court No. 46239
District Court
No. D224029

CIVIL PROPER PERSON APPEAL STATEMENT

Appellant in proper person:
VICTORIA GIAMPA
1848 Wellington Ct.
Henderson, NV 89014

Counsel for Respondent:
BRYCE C. DUCKWORTH,
1935 Village Center Circle
Las Vegas, Nevada 89134

Due Date: 12/19/05

INSTRUCTIONS: You must complete and file this Appeal Statement with the Nevada Supreme Court on or before June 20, 2006.

HOW TO FILL OUT THE FORM: The form must be typed or clearly handwritten. Write only in the space allowed on the form. Additional pages and attachments are not allowed. The Nevada Supreme Court prefers short and direct statements. You do not need to refer to legal authority or the district court record.

WHERE TO FILE THE FORM: You may file your form in person or by mail.

To file your form in person: Bring the form to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada. You can file your form Monday through Friday, 8:00 a.m. to 4:00 p.m.

To file your form by mail: Mail the form to the Clerk of the Supreme Court of Nevada, 201 S. Carson St., Carson City, NV 89701. Your form must be postmarked by the due date.

You must file the original form and 1 copy with the Clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your form, you must submit the original form and 2 copies and include a self-addressed, stamped envelope. Forms cannot be faxed or e-mailed to the Nevada Supreme Court Clerk's Office.

Copies of the completed form must be mailed or delivered to the other parties to this appeal or to the parties' attorneys,

if they have attorneys. You must also fill out the certificate of service that is attached to the form. The Nevada Supreme Court may return any document that does not meet these requirements.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
9/29/05	Findings of Fact and Orders

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 10/25/05

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
	N/A	

Issues on Appeal. Does your appeal concern any of the following issues? Check all that apply:

divorce child custody/visitation
attorney fees

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

On September 23, 1998, after a 21-year marriage, and after a brief hearing, the parties were granted a Decree of Divorce where Appellant, a stay-at-home-mom was granted Primary Physical Custody of both children. Appellant appeared in proper person, therefore, Bryce C. Duckworth, Esq. prepared the Order. One year to the day, Appellee appeared before Judge Steele and was granted a reduction in visitation from (3) weeks down to (2) because of his heavy work schedule. Appellant believes that the Court did not reduce Appellee's time, but regrettably reduced the children's time with their father. From that time on, Appellee did not follow the parenting plan, nor did he exercise his right to overnight visitation for more than (5) years. Appellee withheld paying support and deliberately failed to pay the monthly bill for the family vehicle causing it t be repossessed. Appellant and the parties' (2) minor children were at times short on food and money for household expenses such as the mortgage payment and utility bills that were all seriously past due. Meanwhile, Appellee began to rob and lot the community property estate by liquidating certain stock and stealing the entire cash values from whole life insurance policies for himself and his attorney for such ill-advice and ostensible legal representation. Appellant's belief is that Appellee's motive in filing a motion in November 2004 and an order shortening time that resulted in her losing her visitation with the children during a previous Christmas holiday season was for the sole purpose of changing custody. As of this date such strategy has been achieved. Although, there is no provision in the custody agreement for visitation with other family members, the disruption caused the children to be separated from both parents during a traditional holiday for a period of (6) days which is unprecedented within the

custody agreement. When Appellee began to exercise visitation with the minor children, he left the children alone and unsupervised in gaming casinos/hotels, placing the children at a greater risk. At the same time married and living in his present wife's home, Appellee admits to and bemoans paying for her household expenses, sets up a second household for the children, in a $1500 apartment, and misleads the Court into believing he is living with them, where Appellant's evidence was sufficient to show that the children live without the care and supervision of either parent. Appellee has sold himself to the minor children by buying them cars, cell phones, money, and the freedom to live in their own apartment. Thereafter, failing to seek mediation prior to commencing litigation, Appellant sought relief from the Court to litigate the issue of emancipation and a change of physical custody where his underlying motive all along was to stop paying child support.

In violation of the Court's express orders prohibiting such neglectful conduct not to leave the children alone unsupervised overnight or for more than a couple hours, Appellee, still completely indifferent to the children's welfare, made several out of town trips, and as a result, could not properly supervise or control the children, leaving them at risk. Both children had (6) unexcused absences fro school; Sarah's scanned (6) weeks, and will not graduate on time. Moreover, implementing the Court ordered visitation schedule from Appellant's home to the children's 'apartment' with regularity and predictability, and supervising them, are impossible to implement. Evidence by personal affidavit of family, friends and written reports by the LV Police indicate that the children have on several

occasions been left alone and unsupervised, and when he left the jurisdiction, leaving it up to two minor children to contact their mother, which they never did.

Appellant does not believe that Appellee could ever meet the 2-part test for custody changes which applies when one parent has primary physical custody under NV law. When Appellant came forward to oppose such change of physical custody, believing it is not in the best interests of the minor children, she had been severely sanctioned and ordered to pay hefty attorney fees. Appellant believes that she is a victim and actually having suffered retaliation from the Court for having come forward to defend her right to due process of law and the minor children's statutory and constitutional rights.

Lastly, Appellee's failure to encourage the children to maintain and facilitate a relationship alienated them from their mother. Appellant's frustration arose after the change in custody and became aggravated during this interim period and became so apparent and so numerous that the children were left alone and unsupervised at further risk of harm, that without frequent, substantial physical contact between Appellant and her children, that the welfare of the children would be jeopardized by the fact that they remain in Appellee's custody.

State of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take.

Appellant believes that the Court has abused its discretion and that appellate review of orders for change of physical custody and orders imposing sanctions under Rule 11, and such facts relied upon by the district court to establish a violation of the rule, should be reviewed under the clearly erroneous standard, such that the legal conclusion that the facts constitute a violation of the rule to be reviewed de novo and the appropriateness of the sanction is reviewed for an abuse of discretion. Appellant argues that she should have been granted reasonable discovery and an evidentiary hearing, and therefore, was prejudiced by the denial of those rights, and that such denial of bringing forth genuine issues of material facts of her viable claims, under these facts and circumstances, constitutes a manifest abuse of discretion. Appellant having been deprived of her presence and opportunity to be heard believes that the order is not supported by the evidence in the court record. Appellant's right to parent is constitutionally protected, and the Court abused its discretion and violated the minor children's statutory and constitutional rights.

Based upon the foregoing factual and legal argument, Appellant has demonstrated by a preponderance of evidence that she is entitled to have this case reversed and remanded for a hearing on the merits that would not unreasonable prejudice, nor, suffer injustice in granting of relief, nor substantially impair the other party's rights. Alternatively, Appellant believes that evidence exists necessitating the recusal of Judge for cause so that a hearing and case reassignment would be appropriate under these facts and attendant circumstances.

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed appeal statement upon all parties to the appeal as follows:

By personally serving it upon him/her; or
By mailing it by first class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served by mail):

DATED THIS 18TH DAY OF December, 2005.

_____

VICTORIA GIAMPA
1848 WELLINGTON COURT
HENDERSON, NEVADA 89014
City/State/Zip
(702) 434-9027

EIGHTH JUDICIAL DISTRICT COURT
Family Division
Family Courts & Services Center
601 North Pecos Road
Las Vegas, Nevada 89101-2408

December 7, 2005

Gloria S. Sanchez — *Department B*
District Judge — *(702) 455-5991*

Via Facsimile 388-9643 & Mailed
Dr. Louis Mortillaro
501 S. Rancho Drive, Suite F-37
Las Vegas, NV 89106

Re: Charles F. Giampa v. Victoria M. Lugo-Giampa
Case No. D224029

Dear Dr. Mortillaro:

Ms. Lugo-Giampa filed recent pleadings pertaining to new incidents where the children have allegedly been left alone unsupervised, and has also expressed concerns over both children missing school. I have directed both sides to forward copies of these recent pleadings to you for review, so that your evaluation can address these issues. Mr. Giampa's pleadings essentially allege that he told the children to spend the weekend with Ms. Lugo-Giampa when he was out of town.

At the December 6, 2005 hearing, I ordered that Mr. Giampa's attorney notify Ms. Lugo-Giampa in writing of any occasions where Mr. Giampa will not be available to

supervise overnight, so that Ms. Lugo-Giampa can exercise her custodial rights in his absence and the children will be properly supervised.

Please advise me by facsimile immediately should you believe that the children are at risk of harm and that immediate adjustments to the custodial timeshare are necessary.

Our return hearing on your evaluation is set for January 18, 2006, and the court would appreciate receiving your written report at least 3 days prior to the hearing.

Thank you as always for your continued assistance with this case.

Sincerely,

HON. GLORIA S. SANCHEZ
DISTRICT COURT JUDGE
GSS/js
cc: Bryce C. Duckworth, Esq.
Victoria M..
Lugo-Giampa, In Proper Person
Court File: D224029

REP
VICTORIA GIAMPA
1848 Wellington Ct.
Henderson, NV 89014
(702) 434-9027
Defendant/Counterclaimant In Pro Se

DISTRICT COURT – FAMILY DIVISION
CLARK COUNTY, NEVADA

VICTORIA GIAMPA,	)	**FILED**
	)	**December 5, 2005**
Plaintiff/Counterdefendant,	)	Case No: 98-D224029
	)	Dept No: B
vs.	)	Honorable Judge
	)	Gloria B. Sanchez
	)	
CHARLES GIAMPA,	)	Hearing Date:
	)	December 6, 2005
	)	Hearing Time: 12:00p.m.
Defendant/Counterclaimant.	)	
	)	

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE TEMPORARY ORDER FOR CHANGE OF PHYSICAL CUSTODY PURSUANT TO NRCP 60(b) AND COUNTERMOTION FOR ORDER TO SHOWE CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; COUNTERMOTION FOR PERMANENT ORDERS RE: CUSTODY; COUNTERMOTION FOR ATTORNEY FEES AND SANCTIONS

COMES NOW, DEFENDANT/COUNTERCLAIMANT, VICTORIA GIAMPA (hereinafter DEFENDANT VICTORIA), In Pro Se, who hereby replies to PLAINTIFF GIAMPA'S OPPOSITION TO DEFENDANT'S MOTIION TO SET ASIDE TEMPORARY ORDER FOR CHANGE OF PHYSICAL CUSTODY PURSUANT TO NRCP 60(b) AND COUNTERMOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; COUNTERMOTIION FOR PERMANENT ORDERS RE: CUSTODY; COUNTERMOTION FOR ATTORNEY FEES AND SANCTIOINS.

This Reply is made based upon the court record in this case, the points and authorities contained herein and upon oral argument between the parties and counsel of record adduced at hearing.

DATED this 5th day of DECEMBER, 2005.

By: VICTORIA GIAMPA
1848 Wellington Ct.
Henderson, NV 89014
(702) 434-9027
Defendant In Pro Se

FACTUAL AND LEGAL ARGUMENT
(Points and Authorities)

1. On August 25, 2005, PLAINTIFF GIAMPA and DEFENDANT VICTORIA speared before this Honorable Family Court for an evidentiary hearing on PLAINTIFF GIAMPA'S Motion to Modify Custody regarding the parties' minor son, Mark (age 16).

2. PLAINTIFF GIAMPA had filed a request to modify custody of the parties' daughter, Sarah, despite the fact that she will be 18 years old on December 11th.

3. The August 2005 evidentiary hearing was continued to January 19, 2006.

4. As a result of the apparent unavailability of Dr. Lawrence Lyons, the Court appointed Dr. Louis Mortillaro to conduct the evaluation because Dr. Mortillaro had appeared on each party's "approved" list of custody evaluators in prior proceedings.

At this point DEFENDANT VICTORIA responds to PLAINTIFF GIAMPA'S statements by use of the allegation/response format as follows:

PLAINTIFF'S ALLEGATION NO. 1:

6. The Court ordered that the evaluation be completed by November 30, 2005. In compliance with the Court's directives, Chuck presented himself for the evaluation and has completed his portion of the evaluation testing. It is Chuck's understanding that Victoria has failed to complete her personal evaluation.

DEFENDANT VICTORIA'S RESPONSE NO. 1:

7. DEFENDANT VICTORIA challenges this allegation because she has completed all testing requirements made by Dr. Mortillaro. The parties are simply waiting for Dr. Mortillaro to submit his written report to the court.

PLAINTIFF'S ALLEGATION NO. 2:

8. The children have resided primarily with Chuck for several months. The children have made it adamantly clear to Chuck, Victoria, and to Dr. Mortillaro, that they have no desire to reside primarily with Victoria.
Victoria clearly is aware of this fact and reality.

DEFENDANT VICTORIA'S RESPONSE NO. 2:

9. DEFENDANT VICTORIA challenges this false allegation made by PLAINTIFF GIAMPA because the parties' minor children have not primarily resided with PLAINTIFF GIAMPA. The true facts are that the parties' minor children do not reside with either parent but instead maintain and reside at a separate third residence.

10. DEFENDANT VICTORIA would contend that of course, teenagers don't want rules. Is that a reason to give minor children too much freedom to soon, which has already been misused by SARAH and MARCO evidenced by them ditching school? They're able to ditch school because they are not supervised. The Court should not reward their bad behavior. SARAH and MARCO have never been entitled to this much freedom based on their past history, which is why DEFENDANT VICTORIA imposed the rules she imposed in the first place and which is why PLAINTIFF GIAMPA'S tactics in keeping up the deception that the children are living with him should not be rewarded.

11. In addition, PLAINTIFF GIAMPA assists in managing the children's defiance towards DEFENDANT VICTORIA'S rules and responsibilities which serves the purpose of maintaining the children's dependence on PLAINTIFF GIAMPA. PLAINTIFF GIAMPA fuels the miscommunications between the children and their mother which in turns yields various forms of interference from PLAINTIFF GIAMPA with visitation and undermining of respect for DEFENDANT VICTORIA. PLAINTIFF GIAMPA does not appreciate the value and need for visitation with their mother and works against any visitation. PLAINTIFF GIAMPA is obsessed with his antagonism towards DEFENDANT VICTORIA with clear and consistent derogation of her which involves a combination of brainwashing and hostility that begins with PLAINTIFF GIAMPA and is taken on by SARAH and MARCO. PLAINTIFF GIAMPA has disrupted the emotional bond between DEFENDANT VICTORIA and their children which is causing a complete estrangement between her and their children.

12. DEFENDANT VICTORIA contends that the arrangement violates NRS 125.480, which is to ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage and to encourage the parents to share the rights and responsibilities of child rearing. DEFENDANT VICTORIA further contends that custody litigants have the right to a full and fair hearing and no change of custody can be made until changed circumstances are shown by factual evidence, Moser v. Moser, 108 Nev. 572, 836 P.2d 63 (1992).

13. PLAINTIFF GIAMPA has simply 'bought' the children with money, cars, 'crib,' freedom, no curfews, no responsibilities, no responsibilities to SARAH'S Girl Scout Gold Award Project, nor MARCO'S Boy Scout Merit Badge Project. SARAH and MARCO collude with PLAINTIFF GIAMPA in deception and lies simply to keep secrets from their mother and to express their allegiance to their father.

PLAINTIFF'S ALLEGATION NO. 3:

14. With respect to the other incident referenced in Victoria's Motion, it is Chuck's understanding that Victoria contacted the police department and reported that young children had been left alone. Victoria made it appear to the police department that the children left alone were incapable of caring for themselves.

DEFENDANT VICTORIA'S RESPONSE NO. 3:

15. DEFENDANT VICTORIA challenges this allegation because on at least (2) two occasions she directed the Las Vegas Metropolitan Police Department to conduct a well-check upon the parties' minor children when she discovered that PLAINTIFF GIAMPA traveled out of the country from the care and custody of the parties' minor children for more than (3) three hours or completely removed from the jurisdiction pursuant to the Court's Order of August 25, 2005. DEFENDANT VICTORIA argues that this type of conduct violates Court Order(s) made in the best interest of the parties minor children. [EXHIBIT 7] To Wit:

November 16, 2005 3:12 A.M.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

"ATTEMPTED DOOR KNCK AND WINDOW, KNOCK AT APT. 410, AT COUNTRY CLUB TOWERS, WERE UNABLE TO MAKE CONTACT. MOTHER CONCERNED KIDS LEFT ALONE, HAS COURT ORDER THAT KIDS CAN'T BE LEFT ALONE, UNKNOWN IF APARTMENT IS OCCUPIED."

16. PLAINTIFF GIAMPA defeated the Court's custody Order by failing to supervise the children as evidenced by the police report. They were either not home at 3:30 in the morning or were perpetuating PLAINTIFF GIAMPA'S deceit and lies by not answering the door. Either scenario would suggest they were alone and unsupervised. SARAH and MARCO have learned how easy society can be manipulated and how worthless values are, and they don't care about authority because authority has been manipulated by PLAINTIFF GIAMPA and his attorney.

17. DEFENDANT VICTORIS further contends that the burden on the party seeking modification is identical to that used by a court at an initial custody determination, i.e., proving by a preponderance of the evidence that the best interest of the child would be best served by granting the requesting party primary or sole physical custody. Truax v. Truax, 110 Nev. 437, 874 P.2d 10 (1994); Duff v. Foster, 110 Nev. 1306, 885 P.2d 859 (1994). The Nevada Supreme Court addressed this issue in Mosley v. Figliuzzi, 113 Nev.

51, 930 P.2d 1110 (1997). The Court stated that in cases where a party is seeking to modify a joint custody arrangement, some change in circumstances must have occurred sinc [sic.] thc entry of the most recent order, especially where the last order is fairly new, based on principles or res judicata which preclude a party from re-litigating an issue previously resolved by the court.

PLAINTIFF'S ALLEGATION NO. 4.:

18. When Chuck has been required to be out of town and unable to carc for the children during a weekend, he has instructed the children to stay with Victoria.

DEFENDANT VICTORIA'S RESPONSE NO. 4:

19. DEFENDANT VICTORIA challenges this allegation because it is unsound and foolish. PLAINTIFF GIAMPA contends that it is okay for him t get on a plane and leave the jurisdiction at any time while ostensibly telling the parties' minor children that they are to make contact with DEFENDANT VICTORIA to seek care and supervision. This statement disregards evidence that the parties' minor children have been left alone and unsupervised by PLAINTIFF GIAMPA to engage in the consumption of alcoholic beverages at a separatc and third residence that PLAINTIFF GIAMPA has undertaken to arrange for the parties' minor children. DEFENDANT VICTORIA relies in part on NRS 125a290(10)(a) which provides:

> Any other awarding a party a right of visitation of a minor child must:
> (a) Define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is

achieved. Matters of custody and support of minor children rest in the sound discretion of the trial court. Culbertson v. Culbertson, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975). A court decision regarding visitation is a "custody determination." NRS 125A.040(2). It is presumed that a trial court has properly exercised its discretion in determining a child's best interest. Culbertson, 91 Nev. at 233, 533 P.2d at 770.

20. Apparently this Honorable Family Court overlooked the fact that PLAINTIFF GIAMPA would be making so many out of the country trips while leaving the parties' minor children alone and unsupervised placing the minor children at various types of serious risks. DEFENDANT VICTORIA further contends that PLAINTIFF GIAMPA admits that he only encourages the parties' minor children to spend time with her when he is out of town and unavailable. NRS 125.480(3) requires that the family court, in custody matters, consider "which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent. The father appears to be trying to avoid, at any cost, any continuing relationship with the children's mother. The intention of NRS 125.480 is to reward cooperative behavior by a parent and to punish the kind of behavior engaged in by this father, Prost v. Greene, 675 A.2d 471 (D.C.App. 1996).

PLAINTIFF'S ALLEGATION NO. 5.:

21. It is Chuck's understanding that Dr. Mortillaro has found that the children are not routinely unsupervised as Victoria falsely alleges.

DEFENDANT VICTORIA'S RESPONSE NO. 5:

22. DEFENDANT VICTORIA challenges this false allegation made by PLAINTIFF GIAMPA because she has submitted copies of the written police reports from the Las Vegas Metropolitan Police Department where it is indicated that the parties' minor children have been left alone and unsupervised in the separate and third residence he has arranged.

PLAINTIFF'S ALLEGATION NO. 6:

23. Although Chuck recognizes that such a request may be viewed as extraordinary, he respectfully submits that under the circumstances, such relief is appropriate where the evidence is clear and unequivocal.

DEFENDANT VICTORIA'S RESPONSE NO. 6.:

24. DEFENDANT VICTORIA challenges this allegation because "once primary custody has been established, a court can consider changing custody only if (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change." McMonigle v. McMonigle, 110 Nev. 1407, 887 P.2d 742, 743 (1994) (emphasis added) (quoting Murphy, 84 Nev. at 711, 447 P.2d at 665). A district court's determination of custody will not be disturbed unless there has been a clear abuse of discretion, Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993). However, this court must also be satisfied that the district court's determination was made for the appropriate reasons. Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

PLAINTIFF'S ALLEGATION NO. 7:

25. Chuck should be reimbursed for every dollar incurred with respect to the custody evaluation. Moreover, Chuck respectfully requests the imposition of additional sanctions and fees for Victoria's litigiousness.

DEFENDANT VICTORIA'S RESPONSE NO. 7:

26. DEFENDANT VICTORIA challenges this allegation because she simply moves in these proceeding in the best interest of the parties' minor children. PLAINTIFF GIAMPA knew that he makes frequent out of town trips when he sought a change in physical custody but did not disclose such material fact to this Honorable Family Court. Accordingly, DEFENDANT VICTORIA seeks equitable relief from this court t set aside its order for a temporary change of physical custody. "In order to set aside a judgment or order because of fraud upon the court under Rule 60(b)...it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision" England v. Doyle, supra 281 F.2d at 309. See also United States v. Standard Oil Co. of California, 73 F.R.D. 612, 615 (N.D.Cal.1997). The motion to set aside on this ground is addressed to the sound discretion of the trial court. Title v. United States, 263 F.2d 28 (9th Cir.1959); Siberell v. United States, 268 F.2d 61 (9th Cir. 1959), and the burden on the moving party to establish fraud by clear and convincing evidence, Atchison, Topeka & Santa Fe Railway Co. v. Barrett, 246 F.2d 846 (9th Cir. 1957). England v. Doyle, 281 F.2d 304, 309-310 (9th Cir.1960). DEFENDANT VICTORIA contends that under these attendant facts and circumstances PLAINTIFF GIAMPA is not entitled to attorney fees nor the imposition of sanctions.

CONCLUSION

Based upon this Factual and Legal Argument, DEFENDANT VICTORIA believes that she has demonstrated by clear and convincing evidence that PLAINTIFF GIAMPA should be summarily denied any affirmative relief fro this Honorable Family Court.

SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
Jannette M. Bloom, Clerk
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

October 19, 2005

Victoria Giampa
1848 Wellington Ct.
Henderson, NV 89014

Re: Giampa vs. Giampa No. 42903

Dear Ms. Giampa:

This office is returning to you, **unfiled**, the original and three copies of the document entitled, "Case Appeal Statement" which you submitted in the above-entitled matter.

The remitter was issued on October 12, 2005 and this court no longer has jurisdiction over this matter.

Sincerely,

Annette Alvarado
Deputy Clerk

Enclosures
cc: Smith, Larsen & Wixom

VICTORIA GIAMPA
1848 Wellington Ct.
Henderson, NV 89014
(702) 434-9027
Defendant
In Pro Se

DISTRICT COURT – FAMILY DIVISION
CLARK COUNTY, NEVADA

RECEIVED
Janette M. Bloom
Clerk of
Supreme Court
October 19, 2005

CHARLES GIAMPA,

Plaintiff/Counterdefendant,

vs.

VICTORIA GIAMPA,

Defendant/Counterclaimant.

Case No: 98D224029

Honorable Judge
Gloria B. Sanchez

CASE APPEAL STATEMENT
ON EMERGENCY APPEAL ON ISSUES OF THE BEST INTERESTS OF THE CHILDREN WHO ARE LEFT ALONE AND UNSUPERVISED

COMES NOW, APPELLANT, VICTORIA GIAMPA (APPELLANT VICTORIA), In Pro Se, who hereby files her Case Appeal Statement, in Appeal No. 42903.

1. Name of appellant filing this case appeal statement?

ANSWER NO. 1

VICTORIA GIAMPA

2. Identify the judge issuing the decision, judgment, or order appealed **from?**

ANSWER NO. 2:

HONORABLE JUDGE GLORIA SANCHEZ.

3. Identify all parties to the proceedings in the District Court?

ANSWER NO. 3:

A. Plaintiff/CounterDefendant, CHARLES GIAMPA.

B. Defendant/CounterComplainant, VICTORIA GIAMPA.

4. Identify District Court Case No.?

ANSWER NO. 4:

The relevant District Court Case N. is D224029.

5. Identify Counsel of Record in District Court Case?

ANSWER NO. 5.

A. Bryce C. Duckworth, Esq.
Smith, Larsen & Wixom
1935 Village Center Circle
Las Vega, Nevada 89134
(702) 252-5002

Attorney for Plaintiff/Counterclaimant, Charles Giampa

6. Indicate whether APPELLANT, VICTORIA GIAMPA, was represented by appointed or retained counsel in the district court?

ANSWER NO. 6:

Initially by and through MICHAEL MOREY, ESQ., and then, by and through, VICKI CARLTON, ESQ., then on or about June 23, 2003, VICTORIA GIAMPA, IN PRO SE.

7. Indicate whether APPELLANT, VICTORIA GIAMPA, was represented by, appointed or retained counsel on appeal?

ANSWER NO. 7:

APPELLANT VICTORIA, proceeds In Pro Se in this appeal.

8. Indicate whether APPELLANT, VICTORIA GIAMPA, was granted leave to proceed in forma pauperis, and the date of entry of the District Court order granting such leave?

ANSWER NO. 8:

No such motion pending or intended.

9. Indicate the date the proceedings commenced in the District Court, Date Complaint was filed?

ANSWER NO. 9:

The original complaint for divorce was filed on February 2, 1998, In Pro Se, but later on November 5, 2003, APPELLANT VICTORIA did make an unsuccessful attempt to amend her Decree of Divorce pursuant to NRCP 60(b) In Pro Se.

DATED this 17th day of OCTOBER, 2005.

By:_____
Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Appellant In Pro Se

ORDR

BRYCE C. DUCKWORTH, ESQ.
Nevada Bar No. 004251
SMITH, LARSEN & WIXOM
1935 Village Center Circle
Las Vegas, Nevada 89134
(702) 252-5002
Attorneys for Plaintiff/Counterdefendant

FILED
9/29/2005
Clerk of the Court

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

CHARLES FRANK GIAMPA, Plaintiff/Counterdefendant,	)	
v.	)	CASE NO. 98D224029
	)	DEPT. NO. B
VICTORIA MARGARET LUGO-GIAMPA,	)	
Defendant/Counterclaimant.	)	

FINDINGS OF FACT AND ORDERS

This matter came on for an evidentiary hearing before the above-entitled Court on Plaintiff's Motion to Modify Custody and Resolve Parent-Child Issues (filed herein on January 20, 2005). This matter also came on for a hearing on the following motions and countermotions filed with the Court since April 26, 2005:

(1) Defendant's Amended Notice of Emergency Appeal on Issues of the Best Interests of the Children; (filed on May 25, 2005);

(2) Plaintiff's Motion to Modify Custody and Resolve Parent-Child Issues; Motion for Order to Show Cause and Related Relief (filed on July 19, 2005;

(3) Defendant's Response and Countermotion to Plaintiff's Motion to Modify Custody and Resolve Parent/Child Issues; Motion for Order to Show Cause and Related Relief (filed on August 3, 2005);

(4) Defendant's Motion for Willful and Deliberate Contempt and for Imposition of Sanctions (filed on August 18, 2005); and

(5) Plaintiff's Opposition to Defendant's Countermotion to Plaintiff's Motion to Modify Custody and Resolve Parent/Child Issues; Motion for Order to Show Cause and Related Relief; Plaintiff's Opposition to Defendant's Motion for Willful and Deliberate Contempt and for Imposition of Sanctions; and Plaintiff's Countermotion for Protective Order and for the Imposition of Sanctions Against Defendant (filed on August 23, 20050.

Plaintiff appeared in person and by and through his attorney, BRYCE C. DUCKWORTH, ESQ., of the law firm of SMITH, LARSEN & WIXOM, and Defendant appeared in proper person. The Court, having read the pleadings and papers on file herein, having heard oral argument of counsel and the parties, and good cause therefore, makes the following Findings:

1. This matter originally was set for evidentiary proceedings to consider Plaintiff's request to modify custody relating to the parties' son, Mark Christopher Giampa ("Mark"), born August 15, 1989. Since the time the evidentiary hearing was set, both parties have filed motions with the Court, including a motion filed by Plaintiff to modify custody relating to the parties' daughter, Sarah Elizabeth Giampa ("Sarah"), born December 11, 1987. At this time, the Court has no child interview relating to the parties' daughter, and the evaluation previously ordered by the Court has not been completed. Further, according to the evaluator, the Defendant did not participate in the evaluation.

2. It appears that Dr. Lyons no longer is available to complete the evaluation previously started. Plaintiff had paid the sum and amount of $2,500 towards the cost of the evaluation. A different evaluator is necessary to complete the evaluation. Dr. Louis Mortillaro is the only psychological expert who has appeared o the approved lists of both parties. Thus, Dr. Mortillaro is appointed to replace Dr. Lyons for purposes of providing an evaluation.

3. Plaintiff is current in his financial obligations to the Defendant through July 2005 (with payment received in the sum of $10,500).

4. There is no pending motion regarding the children's attendance at school. The parties agreed in April 2005 to enroll Mark in a Christian school. The parties should request that Dr. Mortillaro expedite his evaluation of the school issues to assist the parties in resolving this issue.

Based on the foregoing Findings, the Court enters the following Orders:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the parties are referred to Dr. Mortillaro for purposes of an evaluation of Plaintiff, Defendant, the parties' children and Plaintiff's spouse. IT IS FURTHER ORDERED that each party shall appear for an evaluation with Dr. Mortillaro, and both children shall be included as part of the evaluation. IT IS FURTHER ORDERED that Dr. Mortillaro may make recommendations regarding custody, visitation, and school attendance relating to the parties' children. IT IS FURTHER ORDERED that Defendant may provide Dr. Mortillaro with copies of the counselor's reports. IT IS FURTHER ORDERED that the parties are to contact Dr. Mortillaro immediately to set-up their appointments. IT IS FURTHER ORDERED that, based upon the offer of the Plaintiff, the Plaintiff shall front the costs associated with the evaluation. IT IS FURTHER ORDERED that, if Defendant fails to participate in the evaluation, the Court will issue a decision on the evidence available at the next date (even if the evaluation is one sided due to lack of participation by Defendant). In this regard, the evaluation will come into evidence at the time of the hearing. As such, IT IS FURTHER ORDERED that both parties participate in the evaluation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that child custody shall be modified temporarily for purposes of stability, with the parties maintaining joint legal custody and shared physical custody, with Plaintiff maintaining primary physical custody, subject to the conditions set forth below.

IT IS FURTHER ORDERED that Defendant's time with the children shall include the first, second and fourth weekends of each month, from after school Friday until Sunday at 7:30 p.m. During the third and fifth weeks when Defendant does not have time during the upcoming weekend, Defendant shall have the children on Monday and Wednesday from 3:30 p.m. until 8:30 p.m. on each such day. IT IS FURTHER ORDERED that the parties shall take into account the children's activities and schools. IT IS FURTHER ORDERED that Plaintiff is to encourage contact between the children and the Defendant. IT IS FURTHER ORDERED that the Court reserves Defendant's right to request compensatory time pending the outcome of the evaluation and the evidentiary hearing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall not leave the children unsupervised overnight, or for a period of time in excess of a couple of hours.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall immediately take the steps necessary to seek to have the parties' son enrolled at Trinity Christian Schools.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's total monthly child support shall be reduced temporarily to a total of $500 per month.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Protective Order and to Quash is granted in part. IT IS FURTHER ORDERED

that the telephone records Defendant has sought by way of Subpoena shall be directed to the Court for in camera inspection. In this regard, Defendant shall modify the Subpoenas to seek telephone records from May 7 2005 through August 24, 2005, and pursuant to the instructions set forth herein. IT IS FURTHER ORDERED that all information from such telephone records shall be redacted, save and except those telephone calls between the numbers specified in court (including Plaintiff's cellular telephone number, Plaintiff's apartment land line, Sarah's cellular telephone number, and Mark's cellular telephone number), as well as Plaintiff's home telephone number which was disclosed to the Court. Any information pertaining to calls to or from other telephone numbers not listed shall be redacted. IT IS FURTHER ORDERED that Defendant shall contact the entities subpoenaed to direct them to produce such records to the Court directly. IT IS FURTHER ORDERED that only the redacted information shall be provided by the Court to the litigants. IT IS FURTHER ORDERED that the Subpoena relating to surveillance tapes from Country Club Towers, as well as the financial documents requested from Country Club Towers, shall be quashed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter is set for a return hearing on January 18, 2006, at 1:30 p.m.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter is continued for the evaluation return and evidentiary hearing.

DATED this 23 day of September, 2005.

GLORIA S. SANCHEZ
DISTRICT JUDGE

Submitted by:
SMITH, LARSEN & WIXOM
By BRYCE C. DUCKWORTH, ESQ.
Nevada Bar No. 004251
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: June 21, 2005
Janette M. Bloom
Clerk of Supreme Court
No. 42903

ORDER

On June 16, 2005, this proper person appeal was dismissed for lack of jurisdiction. In light of the June order, we deny as moot any relief requested in the documents provisionally received from appellant on March 12 and November 18, 2004, and January 31 and June 13, 2005.

It is so ORDERED.

_____C,J.
Becker

cc: Hon. Gloria S. Sanchez, District Judge,
Family Court Division
Dickerson, Dickerson, Consul & Pocker
Victoria Giampa
Clark County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA MARGARET LUGO-GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: June 16, 2005
Janette M. Bloom
Clerk of Supreme Court
No. 44759

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order concerning visitation. Eighth Judicial District Court, Family Court Division, Clark County; Gloria S. Sanchez, Judge.

Matters of custody, including visitation, rest in the district court's sound discretion.[1] This court will not disturb the district court's custody decision absent a clear abuse of discretion.[2] Having reviewed the record, we conclude that the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

---

[1] Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).
[2] Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).
[3] Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from her and deny any relief requested therein.

ORDER this appeal DISMISSED.

_____, J.
Rose

_____,J.
Gibbons

_____, J.
Hardesty

cc: Hon. Gloria S. Sanchez, District Judge,
Family Court Division, Smith Larsen & Wixom
Victoria Margaret Giampa, Clark County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,
Appellant,

vs.

CHARLES GIAMPA,
Respondent.

Filed: June 16, 2005
Janette M. Bloom
Clerk of Supreme Court
No. 42903

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order denying appellant's motion for contempt and other relief, and awarding attorney fees and other sanctions. Eighth Judicial District Court, Family Court Division, Clark County; Gloria S. Sanchez, Judge.

Our review of the record reveals a jurisdictional defect. Specifically, this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule,[1] and no statute or rule authorizes an appeal from an order imposing sanctions. In addition, the district court's sanction order is not a special order after final judgment, because it did not affect the rights of the parties growing out of the final judgment.[2] Accordingly, as we lack jurisdiction to consider this appeal, we

[1] See NRAP 3A(b)(2); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

[2] See Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002).

ORDER this appeal DISMISSED.

_____, J.
Rose

_____,J.
Gibbons

_____, J.
Hardesty

cc: Hon. Gloria S. Sanchez, District Judge,
Family Court Division,
Dickerson, Dickerson, Consul & Pocker
Victoria Margaret Giampa,
Clark County Clerk

Supreme Court, U.S.
FILED
NOV 25 2009
OFFICE OF THE CLERK

14h

(3)

No. 09-502

In The
Supreme Court of the United States

VICTORIA GIAMPA,

Petitioner,

v.

BRYCE C. DUCKWORTH, ESQ., SMITH, LARSEN & WIXOM; CHARLES F. GIAMPA; DISTRICT COURT JUDGE GLORIA SANCHEZ; DISTRICT COURT JUDGE SANDRA L. POMRENZE; DR. LOUIS MORTILLARO; THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; NEVADA SUPREME COURT; NEVADA STATE LEGISLATURE,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Nevada

BRIEF IN OPPOSITION

CATHERINE CORTEZ MASTO
ATTORNEY GENERAL
JILL C. DAVIS
Counsel of Record
SENIOR DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
555 E. WASHINGTON AVENUE, SUITE 3900
LAS VEGAS NEVADA 89101
702-486-2625

Attorneys for Eighth Judicial District Judges Sanchez and Pomrenze, Eighth District Court, Court Executive Officer, Edward A. Friedland, State of Nevada Supreme Court and State of Nevada Legislature

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

1. Whether Victoria Giampa has standing to sue on behalf of her adult children?

2. Whether State Defendants have immunity from suit?

3. Whether Giampa's claims are moot as the children have reached the age of majority?

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STATEMENT OF THE CASE

Petitioner Victoria Giampa ("Giampa") and Charles F. Giampa ("Charles Giampa") were divorced on September 23, 1998. (See Petitioner's Appendix "PA" W). Mark Christopher Giampa was born on August 15, 1989. (See PA FF p. 3). Sarah Elizabeth Giampa was born December 11, 1987. (See PA FF p.3). Giampa appealed Judge Pomrenze's Order of March 6, 2008. (See PA R). The appeal challenged the order (1) vacating a hearing pertaining to various motions filed by Giampa; (2) the finding of Giampa to be a vexatious litigant; (3) denial of Giampa's stay motion; (4) Giampa's countermotion for order to show cause why Charles Giampa should not be held in contempt; and (5) awarding $1,500 in attorney's fees to Charles Giampa. (See PA I). The Nevada Supreme Court ruled that the only appealable issue was the attorney's fees. (See PA I).

The Nevada Supreme Court affirmed the award of the attorney's fees. (See PA I p. 2). The Nevada Supreme Court noted that Giampa failed to identify if any, orders regarding the motions were issued, but stated that the majority of the motions would be considered non-appealable orders. (See PA I, p. 3). Additionally, the Court stated any orders challenging child custody would be moot as the children are now adults. (See PA I, p. 3).

Giampa filed a petition for rehearing. (See PA F). The Nevada Supreme Court recalled remittitur upon Giampa's filing. (See PA F). The Rehearing was denied. (See PA D). Giampa then filed her Petition for Writ of Certiorari.

THE UNDERLYING ALLEGATIONS

Petitioner Victoria Giampa ("Giampa") and Charles F. Giampa ("Charles Giampa") were divorced on September 23, 1998. (See PA W). Mark Christopher Giampa was born on August 15, 1989. (See PA FF p. 3). Sarah Elizabeth Giampa was born December 11, 1987. (See PA FF p.3). The Nevada Family Court action centered upon a custody battle between Victoria Giampa and Charles Giampa. Charles Giampa obtained physical custody of the children and allegedly left his teenage children alone in an apartment, and failed to enroll the children in a Christian school. Giampa filed numerous motions regarding the change in physical custody and custodial care of the children by Charles Giampa after the children reached majority age of eighteen. NRS 129.010. Giampa was then declared a vexatious litigant by Judge Pomrenze. (See PA R). Judge Pomrenze additionally ordered Giampa to pay Charles Giampa's legal expenses of $1,500.00.

REASONS FOR DENYING THE PETITION

Petitioner Giampa is attempting to create a constitutional issue where none exists. Giampa presents three questions for review. The first question asks, "What process is constitutionally due a minor child...." Petition p. 4. Clearly, Giampa lacks standing to sue on behalf of her non-minor children. The children are over 18, and no mental disabilities have been alleged in any document. Giampa is not a lawyer, and therefore she has no ability to represent her children.

The second question asks, "Whether the Nevada Supreme Court and Family Court Judges violates

Victoria's liberty interests when they repeatedly deny her relief as an *aggrieved person* after she satisfies her heavy burden of proving a 'clear and indisputable' right to mandamus relief recognized in *Bauman v. U.S. District Court*, 557 F.2d 650 (9th Cir. 1977)?" The Nevada Supreme Court Justices and Family Court Judges are entitled to judicial immunity for their actions taken in their role as judges and justices.

The third question asks "Whether the Nevada Supreme Court's mooting of Victoria's Writ prevents her from seeking a determination that the Court's temporary order was incorrect on the merits when constitutional issues of the minor children's welfare and education were ignored and not addressed through investigation and/or mediation, and whether it would be inequitable to award fees to Attorney Duckworth effectively mooting out claims for child custody and other underlying issues which are still pending?" The children in question had reached the age of majority when this issue was raised and therefore the issue was moot. There was no ability for the Nevada Supreme Court to modify a court order that could not be enforced as the children had reached the age of majority.

GAIMPA HAS NO STANDING TO SUE ON BEHALF OF HER CHILDREN

Giampa has titled the suit on her behalf but sues in reality on behalf of the rights of her children. The Petition asks, "What process is constitutionally due a minor child..." Petition p. 4. Giampa is asking what process was due to her children. Under Article III of the Constitution, federal judicial power extends only to "Cases" and "Controversies." U.S. Const., art. III, § 2,

cl. 1. Article III standing is thus a threshold requirement for federal court jurisdiction. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 559-60, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). At a constitutional minimum, standing requires the party invoking federal jurisdiction to show that it has "suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant, and that the injury can be traced to the challenged action and is likely to be redressed by a favorable decision." *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 472, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) (citations and internal quotation marks omitted). To satisfy the injury in fact requirement, the alleged harm must be "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan,* 504 U.S. at 560 (citations and internal quotation marks omitted). The party invoking federal jurisdiction bears the burden of establishing these elements. *Id.* at 561.

Giampa attempts to assert the rights of her two children, Sarah and Mark Giampa. Giampa fails to state under which rule she is asserting her children's rights but it appears to be pursuant to Federal Rule of Civil Procedure 17(c) which permits a representative, next of friend or guardian ad litem to sue on behalf of a minor child or incompetent individual. FED. R. CIV. P. 17(c). Mark Christopher Giampa was born on August 15, 1989. (See PA FF p. 3). Sarah Elizabeth Giampa was born December 11, 1987. (See PA FF p.3). There is no allegation that either is incompetent in any document. And both children have clearly reached the age of majority, therefore FED. R. CIV. P.

17(c) is inapplicable. See NRS 129.010 stating majority is eighteen years old.

However, even if FED. R. CIV. P. 17(c) were to apply, a non-attorney "has no authority to appear as an attorney for others than himself." *C.E. Pope Equity Trust v. United States,* 818 F.2d 696, 697 (9th Cir. 1987) (citations omitted); *Campbell v. Burt,* 141 F.3d 927, 931 (9th Cir. 1998); *Johns v. County of San Diego,* 114 F.3d 874, 876-77 (9th Cir. 1997). Likewise, "a parent or guardian cannot bring an action on behalf of a minor child without retaining a lawyer." *Johns,* 114 F.3d at 877; *Osei-Afriyie v. Medical College of Pennsylvania,* 937 F.2d 876, 882-83 (3d Cir. 1991). Any person representing himself of herself without an attorney must appear *pro se* for such purpose. Representation may not be delegated to any other person, including a spouse, parent or other relative, or to any other party on the same side who is not represented by an attorney. A non-attorney guardian for a minor or an incompetent person must be represented by counsel. Giampa lacks standing to sue the Nevada State Legislature on behalf of her children. Therefore, Giampa's claims on behalf of her children lack standing and this Court should not grant certiorari over this matter. *Johns,* 114 F.3d at 877; *C.E. Pope Equity Trust,* 818 F.2d at 697.

THE STATE DEFENDANTS ARE ENTITLED TO JUDICIAL IMMUNITY

Giampa is suing Family Court Judges Gloria S. Sanchez and Sandra L. Pomrenze, and the Nevada Supreme Court Justices and all are entitled to judicial immunity, as are the court entities themselves, the Eighth Judicial District Court and its Court Executive

Officer, Edward A. Friedland. The essential allegation against Judge Sanchez and Judge Pomrenze is that the Judges did not rule in her favor, and now Giampa is attempting to sue the Judges. Giampa's Petition at pages 18-19 sums up Giampa's issues. Judge Pomrenze states to Giampa that there is "Not much I can do about the children now. They're either going to be happy, healthy adults or they're not and I have to go, sorry, it's too late fore me to be able to step in their best interests. ... one's emancipated and the other one is going to emancipate in four weeks." Petition pp. 18, 19. Giampa is attempting to sue the family court judges for ruling against her, and the justices for upholding those rulings.

The Supreme Court long has recognized that judges are immune from suit for monetary damages arising from their judicial acts. *See Mireles v. Waco,* 502 U.S. 9, 9 (1991); *Forrester v. White,* 484 U.S. 219, 225-27 (1988); *Stump v. Sparkman,* 435 U.S. 349, 355-56 (1978). Judicial immunity applies unless the judge's actions either were nonjudicial or were taken in the complete absence of jurisdiction. *See Gallas v. Supreme Court of Pennsylvania,* 211 F.3d 760, 768-69 (C.A. 3 (Pa.) 2000) (citing *Mireles,* 502 U.S. at 11-12). Judges-and their employers-are immune from suits for damages arising out of disagreements with the judges' decisions. *Pierson v. Ray,* 386 U.S. 547, 553-54 (1967) ("Few doctrines [are] more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction."); *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991) ("[J]udicial immunity is not overcome by allegations of bad faith or malice....") To the extent that Giampa wishes to file a disciplinary action against Judges and Justices such a complaint must be

filed as such with the Nevada Department of Ethics, not in the United States Supreme Court.

The underlying principle for granting judicial immunity is that judges should be free to make decisions, even controversial decisions, and act upon their personal convictions without fear of personal liability. *Stump v. Sparkman*, 435 U.S. 349, 355-356 (1978). Judicial immunity even shields judges from liability if the judge is accused of committing grave procedural errors or acting maliciously or intentionally in their judicial capacity. *Id.*; *JNC Co. v. Ollason*, 137 B.R. 46, 50-51 (D. Ariz. 1991), *affirmed* 996 F.2d 1225 (9th Cir. 1993). Furthermore, it has been found that judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved the plaintiff." *Cleavinger v. Saxner*, 474 U.S. 193, 197 (1985) (quoting *Bradley v. Fisher*, 80 U.S. 335, 347, 20 L.Ed 646, 13 Wall. 335 (1871)).

> Although unfairness and injustice to a litigant may result on occasion, it is a general principle of the highest importance to proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.

Bradley, 80 U.S. at 347.

Absolute judicial immunity applies in this case. After closely reviewing the allegations of the Petition, Giampa's claimed injuries stem directly from court orders, entered by Judges Sanchez and Pomrenze in

their capacities as judges for the Eighth Judicial District Court, Family Court, issued while they were presiding over civil matters involving Giampa, and the affirming of these orders by the Nevada Supreme Court. Immunity applies in this matter as all allegations against the Judges and Justices stem from their court orders.

Giampa alleges that the Judges abridged her Fourteenth Amendment rights. This claim does not escape judicial immunity. *See Stump,* 435 U.S. at 355-60 (holding that a judge is entitled to judicial immunity where his actions were alleged to have deprived litigant of due process); *Rheuark v. Shaw,* 628 F.2d 297, 303-04 (5th Cir. 1980) (holding that a judge is entitled to judicial immunity even if his actions deprived criminal defendant of due process). The affirmation of the Family Court Judges by the Nevada Supreme Court entitles the Justices to absolute immunity as well. The actions of an appellate court are shielded by judicial immunity. This immunity extends to the court itself as the Eighth Judicial District Court can only act through its judges. The judicial defendants are entitled to the protection of absolute judicial immunity from Giampa's claims, and certiorari should not be granted.

GIAMPA'S PETITION WAS MOOT AS TO ALL CHILD CUSTODY ISSUES ONCE THE CHILDREN REACHED THE AGE OF MAJORITY

Article III of the Constitution limits our jurisdiction to "actual, ongoing controversies." *Honig v. Doe,* 484 U.S. 305, 317, 108 S.Ct. 592, 600-01, 98 L.Ed.2d 686 (1988). This limitation gives rise to the doctrines of

standing and mootness. To satisfy Article III's standing requirements, a plaintiff must show that, at the time the suit is filed,

> (1) [he] has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). A plaintiff must maintain standing throughout the course of litigation. "If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot." *McBryde v. Comm. to Review*, 264 F.3d 52, 55 (D.C. Cir. 2001), *cert. denied*, 537 U.S. 821, 123 S.Ct. 99, 154 L.Ed.2d 29 (2002).

Once the children reached the age of majority they are no longer minors and Family Court has no ability to enforce any orders regarding child custody. The age of majority in Nevada is eighteen. NRS 129.010. The Nevada Supreme Court properly ruled that all issues pertaining to child custody were moot. Certiorari should not be granted as the issues pertaining to child custody were moot upon the children reaching the age of majority.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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Respectfully submitted,

CATHERINE CORTEZ MASTO
Attorney General

By: JILL C. DAVIS
Senior Deputy Attorney General
Nevada Bar No. 8418
Office of the Attorney General
555 E. Washington Avenue
Suite 3900
Las Vegas Nevada 89101
702-486-2625

Attorneys for Eighth Judicial District Judges Sanchez and Pomrenze, Eighth Judicial District Court, Court Executive Officer, Edward A. Friedland, State of Nevada Supreme Court and State of Nevada Legislature